

UNITED STATES DEPARTMENT OF AGRICULTURE,  
FOREST SERVICE REGION 4  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 10  
IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

Entered and Filed

DEC 06 2006



IN THE MATTER OF:

Soda Springs RD

North Maybe Phosphate Mine

Nu-West Industries, Inc.

and

Nu-West Mining, Inc.

Respondents.

Proceeding Under Sections 104, 122(a)  
and 122(d)(3) of the Comprehensive  
Environmental Response, Compensation  
and Liability Act, as amended (42 U.S.C.  
§§ 9604, 9622(a) and 9622(d)(3)), and  
Idaho Code §§ 39-4413 and 39-108

ADMINISTRATIVE ORDER ON CONSENT/CONSENT ORDER

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## I. INTRODUCTION

1.1 This Administrative Order on Consent/Consent Order ("AOC/CO") is entered into voluntarily by the United States Department of Agriculture, Forest Service ("Forest Service"), the United States Environmental Protection Agency ("EPA"), the Idaho Department of Environmental Quality ("IDEQ"), and Nu-West Mining, Inc. and Nu-West Industries, Inc. (jointly referred to herein as "Nu-West"), the latter as Respondents. This AOC/CO provides for the performance by Nu-West of a Site Investigation ("SI") and an Engineering Evaluation/Cost Analysis ("EE/CA") for the North Maybe Phosphate Mine (the "Site"). The Site is located partly on public land that is under the jurisdiction, custody or control of the Forest Service and partly on privately owned land subject to the jurisdiction of the Forest Service, IDEQ, and/or the EPA. A more detailed description of the Site is provided in Section IV of this AOC/CO ("Definitions"). The Work required for performance of an SI and an EE/CA for the Site is specified in the Statement of Work ("SOW") attached and incorporated by reference as Appendix 1 to this AOC/CO, and is governed by Section IX of this AOC ("Work to be Performed"). Data relevant to the SI for the Site may be available from work undertaken as part of the Area-Wide Investigation contemplated by the Memorandum of Understanding ("MOU") (July 17, 2000) between the IDEQ, EPA, the Forest Service, the United States Department of Interior ("USDOl"), (the Bureau of Land Management ("BLM"), the Fish and Wildlife Service ("FWS"), the Bureau of Indian Affairs ("BIA")), and the Shoshone-Bannock Tribes ("Tribes"), attached as Appendix 2, and the Area Wide Investigation CO/AOC (July 20, 2001) ("AWAOC"), attached as Appendix 3, as well as from other sources. This AOC/CO is implemented consistent with the MOU and AWAOC.

1.2 The Shoshone-Bannock Tribes are federally recognized Indian Tribes with a governing body known as the Fort Hall Business Council. The Tribes exercise their authority pursuant to, among other authorities, CERCLA, their inherent sovereign powers, the Fort Bridger Treaty, the Constitution and By-Laws of 1936, and various provisions of the Land Use Policy

Ordinance, the Law and Order Code of 1982, and the 1994 Fort Hall Water Rights Agreement. The Tribes will coordinate their input into this AOC/CO through the cooperative process set forth in the MOU.

1.3 The Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice has approved of and concurred in this agreement, in accordance with the requirements of Section 4 of Executive Order 12580.

## **II. JURISDICTION**

2.1 This AOC/CO is entered into by EPA and the Forest Service under the authority vested in the President of the United States by Sections 104, 122(a), and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604, 9622(a), and 9622(d)(3). The President's CERCLA response authority is generally delegated to EPA. 42 U.S.C. 9601 et seq; Executive Order 12580 2(g) & 4(d)(1)&(2). The President's CERCLA response authority for land under the jurisdiction, custody or control of the Forest Service is generally delegated to the Secretary of the Department of Agriculture (the "Secretary") by Executive Order 12580, 52 Fed. Reg. 2926 (January 23, 1987), 3 C.F.R., 1987 Compilation, p.193. The Secretary's authority is further delegated to the Chief of the Forest Service (the "Chief") by 7 C.F.R. 2.60(a)(39). The Chief's authority is re-delegated to Regional Foresters, pursuant to the Forest Service Manual 2164.04c, 2.1, effective November 10, 1994.

2.2 This AOC/CO is entered into by IDEQ pursuant to the Idaho Environmental Protection and Health Act ("EPHA"), Idaho Code §§ 39-101 to 39-130, and the Hazardous Waste Management Act of 1983 ("HWMA"), Idaho Code §§ 39-4401 to 39-4432, and any authority that IDEQ has or may have pursuant to applicable laws (statutory and common law) or regulations administered or enforced by the Department, including without limitation CERCLA and the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.

2.3 Without admitting any liability, Nu-West agrees to the terms and conditions of this AOC/CO without the issuance of a Notice of Violation or the holding of a compliance conference under applicable Idaho law.

2.4 In any action to enforce the terms of this AOC/CO, the Parties agree not to contest its validity or the authority and jurisdiction of the United States to issue and enforce this AOC/CO, and the Parties agree to comply with and be bound by the terms and conditions of this AOC/CO. In addition, the Parties agree not to contest the authority and jurisdiction of the IDEQ, EPA and FWS to enforce the provisions in Section XXIV of this AOC/CO related to costs. By signing this AOC/CO, however, Nu-West does not concede or waive its right to object to the authority of the United States or the IDEQ to issue, take, or enforce any other order or action relating to this Site.

### **III. PARTIES BOUND**

3.1 This AOC/CO shall apply to, and be binding upon, the Forest Service, EPA and the IDEQ, and upon Nu-West and its officers, employees, agents, successors and assigns. Any change in ownership or corporate status of Nu-West including, but not limited to, any transfer of assets or real or personal property shall not alter Nu-West's obligation to comply with the requirements of this AOC/CO or to ensure compliance by any successor or assign of Nu-West, regardless of whether Nu-West continues to exist following such transaction. The signatories to the AOC/CO certify that they are authorized to execute and legally bind the Parties they represent to this AOC/CO.

3.2 Nu-West shall provide a copy of this AOC/CO and all of its Appendices to each contractor, subcontractor, laboratory, and consultant retained to perform Work under the AOC/CO within fourteen (14) days after the effective date of this AOC/CO or the date of retaining their services, whichever is later, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this AOC/CO and its

Appendices. Notwithstanding the provisions of any such contract, however, Nu-West is, and shall remain, responsible for compliance with this AOC/CO.

#### **IV. DEFINITIONS**

4.1 Unless otherwise expressly provided herein, terms used in this AOC/CO that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this AOC/CO or in the attached Appendices, the following definitions shall apply:

“AOC/CO” shall mean this Administrative Order on Consent/Consent Order and all attached Appendices. In the event of a conflict between this AOC/CO and any Appendix, this AOC/CO shall control.

“BLM” shall mean the United States Department of the Interior, Bureau of Land Management.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than Saturday, Sunday, or a Federal holiday. In computing any period of time under this AOC/CO, where the last day falls on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“Deliverable” shall mean the documents identified in paragraph 9.6 that Nu-West must submit pursuant to this AOC/CO, and any additional documents identified in writing by the Lead Agency under Section XXI of this AOC/CO. All Deliverables under this AOC/CO are subject to review, comment, and approval as described in Paragraph 9.7 of this AOC/CO.

“DOI” shall mean the United States Department of the Interior.

“Effective date of this AOC/CO” shall mean the date on which the AOC/CO has been executed by all Parties and concurred in by the Department of Justice.

“EPA” shall mean the United States Environmental Protection Agency.

“EPHA” shall mean the Idaho Environmental Protection & Health Act, Idaho Code §§ 39-101 to 39-130.

“Forest Service” shall mean the United States Department of Agriculture, Forest Service;

“FWS” shall mean the United States Department of the Interior, Fish and Wildlife Service;

“HWMA” shall mean the Hazardous Waste Management Act of Idaho, Idaho Code §§ 39-4401 to 39-4432.

“IDEQ” shall mean the Idaho Department of Environmental Quality;

“IDL” shall mean the Idaho Department of Lands;

“Lead Agency” shall mean the Forest Service, which provides the On-Scene Coordinator to direct the Work under this AOC/CO.

“MOU” shall mean the July 2000 “Memorandum of Understanding Concerning Contamination from Phosphate Mining Operations in Southeastern Idaho” between several federal agencies (Forest Service, EPA, BLM, BIA and FWS), IDEQ and the Shoshone-Bannock Tribes.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300, and amendments thereto.

“Pollutant and/or deleterious materials” shall mean materials currently defined under Idaho law and regulation as such. Use of the term “pollutant and/or deleterious materials” in this AOC/CO in connection with any of the federal entities shall not be construed as extending the entities’ jurisdiction to those materials.

“Site” shall mean the North Maybe Phosphate Mine and the area of overburden disposal associated with the mine. Both the mine and the overburden disposal area are located approximately 25 miles northeast of Soda Springs, Idaho. The Site also includes the areal extent of contamination from the mine and overburden disposal area, if any, and all suitable areas in very close proximity to the contamination necessary for response action implementation. The

North Maybe Phosphate Mine is located primarily on National Forest System land on the Caribou/Targhee National Forest, most of which is under a Forest Service Special Use Permit to Nu-West Mining, Inc. and BLM phosphate leases I-04 and I-8289 to Nu-West Mining, Inc. in Sections 17, 20, 21, 28, 33, and 34, Township 07 South, Range 44 East; and sections 3, 4, 10, 14 and 15, Township 08 South, Range 44 East; of the Boise Meridian, Caribou County, Idaho. A map of the Site and a map of the vicinity of the Site are attached to this AOC/CO as Appendix 4 and Appendix 5, respectively, and are incorporated by reference into this AOC/CO.

“Statement of Work” or “SOW” shall mean the documents that outline the Work to be performed by Nu-West to implement the SI and EE/CA, and to satisfy the requirements of this AOC/CO as set forth in Appendix 1 of this AOC/CO, and any modifications made thereto in accordance with Section XXXI of this AOC/CO.

“Support Agency” means an agency that provides a support agency coordinator or project manager to furnish necessary data to the Lead Agency, reviews response data and documents, and provides other assistance as requested by the OSC.

“Tribes” shall mean the Shoshone-Bannock Tribes.

“United States” shall mean the United States of America, including its departments, agencies and instrumentalities.

“USDA” shall mean the United States Department of Agriculture.

“Work” shall mean all tasks that Nu-West is required to perform pursuant to this AOC/CO, and its attached Appendices, and all Deliverables produced pursuant to this AOC/CO.

## **V. FINDINGS OF FACT, CONCLUSIONS OF LAW AND DETERMINATIONS BY FOREST SERVICE, EPA AND IDEQ**

5.1 The North Maybe Phosphate Mine is located in Caribou County, Idaho primarily on National Forest System land, owned by the United States and leased to Nu-West Mining, Inc. for phosphate mining. The Forest Service exercises jurisdiction, custody or control over National Forest System land on behalf of the United States. On behalf of the United States, the BLM is

responsible for the issuance and administration of leases for mineral extraction on those lands. Predecessors of Nu-West Mining, Inc. have conducted extensive mine-related operations at the North Maybe Mine, both on private lands, on Forest System lands covered by the federal phosphate leases described below, and on National Forest System land not included in the leases, under a special use permit issued and administered by the Forest Service.

5.2 Two Federal Phosphate Leases (Lease I-04, a small section of Lease I-8289) and a Forest Service Special Use Permit are associated with the Site. Following trenching and other exploratory work by the U.S. Geological Survey in 1911 and 1948, the BLM held a competitive lease sale for the phosphate resources of the Site in 1949. Lease I-04 was issued in 1950 to Western Fertilizer Association, was assigned in 1959 to Central Farmers Fertilizer Company, and was assigned in 1964 to El Paso Natural Gas Products. Following exploratory work by its predecessors, El Paso Natural Gas Products began full-scale mining operations at the North Maybe Mine in 1965. Lease I-04 was assigned in 1970 to El Paso Products Service Company, which continued mining operations at the Site through 1972. In 1972, Lease I-04 was assigned to Agricultural Products Corporation, which in 1974 was merged into Beker Industries Corporation, which continued mining operations and became the lessee of record. In 1979, Beker assigned a 50% interest in Lease I-04 to a newly-created subsidiary of one of its customers, Western Co-Operative Fertilizer (U.S.) Inc., and that entity and Beker then created and assigned Lease I-04 in January 1979 to the Conda Partnership, with Beker as its managing partner. Beker operated the North Maybe Mine from 1972 through its initial closure in 1984. Lease I-04 was held by the Conda Partnership from 1979 until it was assigned to Nu-West Mining, Inc. in 1995. Nu-West Mining, Inc. (formerly Western Co-Operative Fertilizers, (U.S.) Inc.) was a partner in the Conda Partnership from approximately 1978, and Nu-West Industries, Inc. acquired the partnership interest of Beker Industries Corporation in the Conda Partnership out of Beker's bankruptcy proceeding in 1987. In 1992, Nu-West Industries, Inc. acquired all of the stock of Western Co-Operative Fertilizer (U.S.) Inc. and changed its name to Nu-West Mining, Inc. In 1995, the Conda Partnership assigned all of its interest in Lease I-04 to Nu-West Mining, Inc.

Nu-West Mining, Inc. is the current lessee under these leases and the permittee under the Special Use Permit.

5.3 Nu-West's predecessor, El Paso Natural Gas Products, began full-scale production at the North Maybe Phosphate Mine in 1965, using an open pit method of extraction. Active mining operations at the North Maybe Phosphate Mine originally discontinued in 1984 and, after a brief resumption in 1993 to mine the south "saddle area", active mining activities permanently ended in 1993. Reclamation work has been performed at the Site in accordance with the federally-approved mine and reclamation plan, but has not yet been completed.

5.4 Open pit mining operations at the Site included removing overburden, which was either placed in piles or in a previously mined portion of the pit. The shale portion of the overburden contains selenium, as well as other contaminants that are designated hazardous substances.

5.5 Selenium and other hazardous and deleterious substances have been detected above background concentrations in surface water monitoring and sampling conducted at the Site by Nu-West. Subsequent sampling conducted by the Forest Service, IDEQ, and their contractors indicate that selenium and other hazardous and deleterious substances are being leached from waste rock at the site into the environment, and may be impacting vegetation and surface water.

5.6 Pursuant to the July 2000 MOU, the Forest Service has been selected as the Lead Agency for conducting response actions at the Site.

5.7 As stated in the AWAOC, the Parties intend that Work accomplished in accordance with this site-specific AOC/CO will be closely coordinated with the Area-Wide investigation.

5.8 Subject to paragraph 6.1, and based on the Findings of Fact set forth above in paragraphs 5.1-5.7, and the Administrative Record supporting this removal action, the Forest Service, EPA, and IDEQ have made the determinations set out in paragraphs 5.8.1 through 5.8.9.

5.8.1 The Site is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

5.8.2 The contaminants found at the Site, including selenium and other hazardous substances, are “hazardous substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and are “hazardous and deleterious materials” subject to the provisions of IDAPA 58.01.02.800, or are otherwise “pollutants” as defined by IDAPA 58.01.02.003.78.

5.8.3 There has been an actual or threatened “release”, as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of one or more hazardous substances from the facility.

5.8.4 There has been an actual discharge, as defined in IDAPA 58.01.02.003.25, of one or more pollutants or hazardous or deleterious materials from the facility to waters of the State of Idaho.

5.8.5 Nu-West Mining, Inc. and Nu-West Industries, Inc. are “persons” as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21) and IDAPA 58.01.02.003.74.

5.8.6 Nu-West Mining, Inc. and Nu-West Industries, Inc. are liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as past and/or current owners and/or operators of the Site and/or as persons who arranged for the disposal of hazardous substances at the Site.

5.8.7 Nu-West Mining, Inc. and Nu-West Industries, Inc. are liable to the State of Idaho under IDAPA 58.01.02.080.01.a-b. as a result of discharge to waters of the State of pollution and/or hazardous and deleterious materials.

5.8.8 The actual or threatened release of pollutants, hazardous substances and/or deleterious materials from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a) or will otherwise injure designated beneficial uses of waters of the State within the meaning of IDAPA 58.01.02.080.01.b.

5.8.9 The Work to be performed under this AOC/CO is necessary to protect public health, welfare or the environment, will be consistent with CERCLA, the NCP, EPHA, and HWMA, will expedite effective response actions, and is in the public interest.

## **VI. COLLATERAL USE OF THIS AOC/CO**

6.1 Except as set forth in paragraph 2.4, nothing in this AOC/CO shall constitute or be construed as an admission of liability or fact by any of the Parties. Specifically, Nu-West does not admit the jurisdiction of, or any responsibility or liability to, or the findings of fact, conclusions of law, or determinations made by, the Forest Service, EPA, the United States, the IDEQ, or any other party regarding or relating to the presence or sources of hazardous or deleterious substances at the Site, or arising out of or relating to the Site or the matters described herein, nor does it acknowledge or concede that any release or threatened release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment. The United States, including its agencies, and the IDEQ similarly do not admit any liability arising out of or relating to the Site or otherwise waive any provisions of the July 2000 MOU relating to liability or jurisdiction. None of the provisions of this AOC/CO shall be admissible in evidence in any proceeding, other than in a proceeding to enforce this AOC/CO or any judgment related to it, or for the purpose of demonstrating the consistency of the actions taken under this AOC/CO with the NCP and CERCLA, and/or the EPHA and HWMA, or in an action to recover response costs from any third party or parties.

## **VII. ORDER**

7.1 Based upon the foregoing provisions of this AOC/CO, and the Administrative Record for the Site, it is hereby ordered and agreed that Nu-West shall comply with the provisions of this AOC/CO, including but not limited to all Appendices to this AOC/CO and documents incorporated by reference into this AOC/CO, and perform the actions required in this AOC/CO.

## VIII. ON-SCENE COORDINATOR/PROJECT COORDINATOR

8.1 The Forest Service has been designated as the Lead Agency for the Site pursuant to the MOU. The Forest Service will coordinate with EPA, FWS, BLM, the Tribes, BIA, IDEQ and IDL (Support Agencies) pursuant to the terms of the MOU. The Forest Service as Lead Agency will appoint an On-Scene Coordinator ("OSC"). The initial OSC for the Site is:

Jeffrey L. Jones  
 USDA Forest Service  
 Caribou/Targhee National Forest  
 Soda Springs Ranger District  
 Soda Springs Rd.  
 Soda Springs, ID 83276  
 Phone: 208-547-1111  
 Fax: 208-547-1112  
 e-mail: jjones13@fs.fed.us

Nu-West has designated as the Project Coordinator for the Site:

Scott Sprague  
 Nu-West Industries, Inc.  
 P.O. Box 284 (mail)  
 164 Old Oregon Road (FedEx)  
 Soda Springs, ID 83276  
 Phone: 208-547-3210  
 Fax: 208-547-0259  
 Cell: 303-883-1184  
 e-mail: ssprague@agrium.com

8.2 The OSC and the Project Coordinator shall be responsible for overseeing implementation of the Work and/or activities required at the Site under this AOC/CO. All written communications between the Parties concerning implementation of this AOC/CO shall be directed to the OSC or Project Coordinator, by regular or overnight mail or by facsimile, with copies to such other persons as the Parties reasonably designate. The Parties may change their respective OSC/Project Coordinator and shall notify each other in writing at least five (5) days prior to any such change.

8.3 Deliverables and other written communications submitted under this AOC/CO shall be sent to the following persons:

For the Forest Service: the OSC designated in paragraph 8.1.

## For the IDEQ:

Mary Kauffman  
Idaho Department of Environmental Quality  
444 Hospital Way #300  
Pocatello, ID 83201  
Phone: (208) 236-6160  
Fax: (208) 236-6168  
e-mail: mkauffina@deq.state.id

## For the Tribes:

Christina Cutler  
Shoshone-Bannock Tribes  
P.O. Box 306  
Fort Hall, Idaho 83203  
Phone: (208) 478-3740  
Fax: (208) 237-0797  
e-mail: ccutler@shoshonebannocktribes.com

## For BLM:

Bill Stout  
Bureau of Land Management  
4350 Cliffs Drive  
Pocatello, ID 83204  
Phone: (208) 478-6367  
Fax: (208) 478-6376  
e-mail: Bill\_Stout@blm.gov

## For BIA:

Dean Fox  
BIA-Fort Hall Agency  
P.O. Box 220  
Fort Hall, ID 83202  
Phone: (208) 238-2312  
Fax: (208) 238-9391  
e-mail: deanfox@bia.gov

## For FWS:

Susan Burch, Contaminants Specialist  
USFWS - Idaho Snake River Basin Office  
1387 S. Vinnell Way, Room 368  
Boise, ID 83709  
Phone: (208)378-5265  
Fax: (208)378-5262  
e-mail: susan\_burch@fws.gov

For EPA:

Matt Wilkening  
 1435 N. Orchard St.  
 Boise, ID 83706  
 Phone: (208) 378-5760  
 e-mail: wilkening.matt@epa.gov

For Nu-West: the project coordinator designated in paragraph 8.1.

For IDL:

Chris Morris  
 Idaho Department of Lands  
 3563 Ririe Highway  
 Idaho Falls, Idaho 83401  
 Phone: 208-525-7167  
 Fax: 208-525-7178  
 e-mail: cmorris@idl.state.id.us

8.4 The OSC shall have the authority vested in the OSC by the NCP. Absence of the OSC from the Site shall not be cause for stoppage of Work unless specifically directed by the OSC.

## **IX. WORK TO BE PERFORMED**

9.1 Nu-West agrees to perform a Site Investigation ("SI") and an Engineering Evaluation and Cost Analysis ("EE/CA") for the Site, consistent with the SOW. The parties agree to use reasonable efforts to coordinate activities under this AOC/CO with any future mining operations at or in the vicinity of the Site, in order to minimize interference between AOC/CO activities and any mining activities.

9.1.1 The general objective of the SI is to determine the scope of any release or threatened release of hazardous substances to the environment at or from the Site. The SI shall consist of sampling and monitoring, including the preparation of reports, as set forth in the SOW. Some sampling and monitoring has already been conducted at the Site, including that done in connection with the AWAOC. The SOW describes the Work necessary, in addition to those activities, to perform the SI. Nu-West shall perform the SI in accordance with the SOW.

9.1.2 The general objective of the EE/CA for the Site is to identify and evaluate removal action requirements and alternatives designed to prevent, mitigate, or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants and/or deleterious materials at the Site in accordance with the NCP, 40 C.F.R. § 300.415, and applicable state law. Nu-West shall perform the EE/CA in accordance with the SOW for the Site (Appendix 1). The EE/CA shall include, but is not limited to, the following:

9.1.2.1 An identification of removal action objectives, as more specifically set forth in the SOW and EPA's Guidance on Conducting Non-Time Critical Removal Actions Under CERCLA, Office of Solid Waste and Emergency Response ("OSWER") Directive No. 9360.0-32, August 1993;

9.1.2.2 An identification and comparative analysis of removal action alternatives, including an analysis of their effectiveness, cost, and ability to be implemented, as more specifically set forth in the SOW and OSWER Directive No. 9360.0-32; and

9.1.2.3 A recommended action alternative identified by the Lead Agency.

9.2 All Work to be performed under this AOC/CO shall be under the direction and supervision of qualified personnel of Nu-West or its consultants with experience in CERCLA investigations and response actions. The Forest Service has determined, for the purposes of section 104(a) of CERCLA, that Nu-West is qualified to properly and promptly perform the SI and EE/CA Work required by this AOC/CO. Nu-West shall notify the Lead Agency of the name and qualifications of any other contractors or subcontractors retained to perform the Work under this AOC at least 15 days prior to commencement of such Work. The Lead Agency retains the right to disapprove of any of the contractors and/or subcontractors retained by Nu-West, or of Nu-West's choice of itself to do the Work. If the Lead Agency disapproves of a selected contractor or Nu-West's choice of itself, Nu-West shall retain a different contractor or notify the Lead Agency that Nu-West will perform the Work in place of the disapproved contractor, within 30 days following the Lead Agency's disapproval. Nu-West shall notify the Lead Agency of that contractor's name and the qualifications of the contractor or Nu-West within that same time.

9.3 All samples analyzed shall be analyzed by a laboratory that participates in a Quality Assurance/Quality Control program equivalent to that specified in the guidance documents listed in section 3.1 of the SOW.

9.4 All Work under this AOC/CO shall be conducted in accordance with CERCLA, the NCP, EPHA, HWMA, and applicable guidance documents. The OSC will provide Nu-West with copies of the relevant guidance documents upon request. All Work performed by and for Nu-West in compliance with the requirements of this AOC/CO, its Appendices, or the Deliverables specified in paragraph 9.6, *infra*, and approved by the Lead Agency, shall be deemed to be necessary and consistent with CERCLA, the NCP, EPHA and HWMA.

9.5 During performance of the Work required under this AOC/CO, Nu-West shall provide the Lead Agency with data and Deliverables as described below and/or in the SOW. Upon the written request of the OSC, Nu-West shall provide the Lead Agency with non-validated analytical data within thirty (30) days of receiving such data. Nu-West shall also notify the Lead Agency in writing of the seasonal completion of field activities within seven (7) days of the date of completion.

9.6 The documents required under this AOC/CO to be prepared, submitted for approval, and implemented by Nu-West shall be known as "Deliverables". For the purposes of this AOC/CO, Deliverables shall include the SI/EE/CA Work Plan, the Sampling and Analysis Plan (SAP), the Draft SI Report, the Final SI Report, the Draft EE/CA Report, and the Final EE/CA Report. These Deliverables are described more fully below:

9.6.1 SI/EE/CA Work Plan. Nu-West shall submit and implement a complete SI/EE/CA Work Plan that satisfies the SOW.

9.6.2 Sampling and Analysis Plan (SAP). Nu-West shall submit and implement a SAP that includes a site health and safety plan covering all Work under this AOC/CO. This plan shall be consistent with the NCP, any applicable state regulations, and any applicable EPA guidance including EPA's current Standard Operating Safety Guides (EPA Publication 9285:1-03, PB92-963414, June 1992). In addition, the plan shall comply with all applicable occupational safety

and health regulations. Also, the SAP will include procedures for collecting, transporting and analyzing all samples collected at the Site, as well as procedures for quality assurance/quality control ("QA/QC"). These procedures shall be consistent with 40 C.F.R. § 300.415(b)(4)(ii) and EPA Requirements for Quality Assurance Project Plans, EPA QA/G 5. The SAP shall identify laboratories to be used during performance of the Work of this AOC/CO.

9.6.3 SI Report. Nu-West shall submit a report documenting the implementation and results of the sampling and analysis required in the SI Work Plan, including modifications approved by the Lead Agency, if any, made during the implementation. The final report shall include: documentation of the conditions encountered during well installation; development logs; a description of the sampling procedures completed; a presentation of the analytical results of all sampling and analyses performed; and appendices containing all relevant documentation generated during the monitoring, including, without limitation, manifests, invoices, bills, chain of custody, sampling data sheets, laboratory results, contracts, permits, and pertinent portions of the work performed pursuant to the AWAOC, which may be incorporated by reference into the SI Report.

9.6.4 EE/CA Report. Nu-West shall submit a report documenting implementation of the EE/CA Work Plan, including modifications approved by the Lead Agency as provided herein, if any, during the implementation. The final report shall contain a detailed analysis of removal alternatives, a recommendation for the selection by the Lead Agency of a removal alternative, and a detailed justification for the recommendation, as described in paragraph 9.1.2 of this section, the SOW and the EE/CA Work Plan.

9.7 All Deliverables shall be submitted initially by Nu-West in draft form, in accordance with the schedule in the SOW, or as otherwise established by the Lead Agency OSC, and are subject to review, comment, and written approval or disapproval by the Lead Agency. The Lead Agency agrees to consolidate any comments received from Support Agencies and to provide a single set of instructions to Nu-West. Within thirty (30) days of Nu-West's receipt of the comments from the Lead Agency on each draft document, Nu-West shall amend and submit a

revised document to the Lead Agency that incorporates all comments and corrects all deficiencies identified by the Lead Agency, unless such comments have been revised or withdrawn in writing. Deliverables approved by the Lead Agency shall be incorporated herein, shall be enforceable as a part of this AOC/CO, and may be modified only upon the written approval of the appropriate Lead Agency. The Lead Agency may also approve a Deliverable with modifications. Once approved with modifications, the Deliverable shall be incorporated herein, shall be enforceable as part of this AOC/CO, and may be modified only upon written approval of the Lead Agency.

9.8 The Deliverables shall be submitted to the Lead Agency in accordance with the schedule set forth in section 5 of the SOW.

9.9 The absence of written comments by the Lead Agency in response to the submission of any Deliverable by Nu-West pursuant to this AOC/CO shall not be construed as approval of the Deliverable under this AOC/CO.

9.10 Nu-West shall not implement the actions described in a Deliverable in connection with any Work at the Site until it receives written approval of the Deliverable from the Lead Agency. Each Deliverable approved in writing by the Lead Agency shall be incorporated by reference into this AOC/CO. All Work performed pursuant to this AOC/CO shall be in accordance with approved Deliverables, unless otherwise authorized in writing by the OSC. Failure to materially comply with any provision of an approved Deliverable shall be considered a violation of this AOC/CO.

9.11 Unless the OSC authorizes a smaller number in writing, Nu-West shall provide to the Lead Agency an electronic copy and four (4) paper copies of each draft and final Deliverable, including one unbound copy. Nu-West shall also provide one paper copy and, if requested, an electronic copy to each Support Agency listed in paragraph 8.3 of this AOC/CO. All reports, maps and supporting information shall be provided in readily reproducible form.

9.12 The Forest Service will prepare a Community Relations Plan for the Site in accordance with applicable EPA guidance and the NCP. Nu-West shall provide information and

otherwise cooperate in support of the preparation and implementation of the Community Relations Plan.

9.13 Upon request by the Lead Agency, Nu-West shall provide copies of plans, task memoranda, field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other documents generated in connection with the Work performed under this AOC/CO. Any claim that Nu-West need not disclose such materials based on a claim of privilege shall be governed by paragraphs 18.3 and 18.4 of this AOC/CO.

#### **X. ADMINISTRATIVE RECORD**

10.1 In accordance with 40 C.F.R. §§ 300.800-825, the Forest Service will determine the initial contents and location of the administrative record for the Site. Nu-West may submit to the Forest Service for consideration for inclusion in the record any records, reports, data, documents, photographs, or other information or materials prepared, discovered, relied on, or otherwise generated or used in connection with Nu-West's performance of Work under this AOC/CO. However, nothing in this paragraph shall be deemed to limit or affect the lawful discretion of the Forest Service to determine the contents of the administrative record.

10.2 The Forest Service retains the responsibility for releasing to the public the one or more EE/CA Reports and any decision documents for the Site. The Forest Service will, after providing opportunity for public comment on any EE/CA Report, in accordance with 40 C.F.R. §§ 300.415 and 300.820, select a removal alternative that the Forest Service determines is appropriate for the Site. The selection of a removal action by the Forest Service is governed by Section 113(h) and (j) of CERCLA and shall not be subject to the dispute resolution procedures of this AOC/CO. Nothing in this AOC/CO shall be deemed to obligate Nu-West to perform or take any action pertaining to the selected removal action.

10.3 Upon request by the OSC in writing, Nu-West shall submit to the Forest Service, upon submission of an EE/CA Report for the Site, any documents developed during the course of

the EE/CA. Documents developed during the performance of the EE/CA include, but are not limited to, copies of plans, task memoranda, documentation of field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports required pursuant to this AOC/CO. Nu-West also shall submit any correspondence between Nu-West and state, local, or other federal authorities concerning the performance of the EE/CA or the selection of the removal action for the Site. Any claim that such materials may be privileged shall be governed by Paragraphs 18.3 and 18.4 of this AOC/CO.

#### **XI. OTHER APPLICABLE LAWS**

11.1 All actions required to be taken pursuant to this AOC/CO shall be performed in accordance with the requirements of all applicable local, state, and federal laws and regulations, except that, pursuant to Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. § 300.400(e), no Federal, State, or local permit shall be required for the portion of the Work conducted entirely on-site, where such Work is carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621(e), and the NCP. Where any portion of the Work performed off-site requires a federal or state permit or approval, Nu-West shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

11.2 Compliance by Nu-West with the terms of this AOC/CO shall not relieve Nu-West of its obligation to comply with CERCLA, RCRA, EPHA, HWMA, or any other applicable local, state, or federal laws and regulations.

#### **XII. RECORD PRESERVATION**

12.1 The original or one copy of all records and documents in the possession, custody or control of Nu-West, excluding internal drafts of Deliverables, that are generated or collected pursuant to this AOC/CO shall be preserved during performance of the Work and for a minimum of ten (10) years after completion of the Work required under this AOC/CO, unless the Lead

Agency notifies Nu-West in writing that these documents may be destroyed earlier. After the expiration of this ten-year period, Nu-West shall notify the Lead Agency and EPA at least 60 days before the documents are scheduled to be destroyed and shall provide the Lead Agency and EPA with the opportunity to take possession of or copy non-privileged material.

### **XIII. CLAIMS AGAINST THIRD PARTIES**

13.1 The Parties to this AOC/CO reserve any claims they now have, or may have in the future, against any third party including, but not limited to, claims under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, for recovery of response costs, including oversight or enforcement costs arising out of or related to this AOC/CO, and any future and/or past costs incurred in connection with the Site or this AOC/CO. Nothing in this AOC/CO shall constitute or be construed as a release from any claim, cause of action or demand against any person, firm, partnership, or corporation not a signatory to this AOC/CO for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants and/or deleterious materials found at, taken to, or taken from the Site, or from the ownership or operation of the Site or any portion thereof.

### **XIV. MODIFICATION OF AOC/CO PLANS OR SCHEDULES**

14.1 The terms of this AOC/CO may be modified only by the written agreement of the Parties; provided, modifications to any plan or schedule may be made, in writing, by the OSC or at the OSC's direction, as provided in paragraph 31.1.

**XV. THREATENED/ENDANGERED SPECIES**

15.1 Nu-West shall immediately notify the OSC and Fish and Wildlife Service of any and all threatened or endangered species encountered on the Site in the course of performing activities under this AOC/CO.

**XVI. COUNTERPARTS AND EFFECTIVE DATE**

16.1 This AOC/CO may be executed in any number of counterparts, each of which when executed and delivered to the Forest Service OSC shall be deemed to be an original, but such counterparts shall together constitute a single, integrated document. This AOC/CO shall be effective on the date it has been signed by all the Parties and approved by the United States Attorney General or her/his designee.

**XVII. ACCESS**

17.1 Beginning on the effective date of this AOC/CO, the Forest Service shall permit access to the portions of the Site located on National Forest System land to Nu-West and its authorized representatives, as necessary to perform the Work required under this AOC. Nu-West shall provide access to the Site and to off-Site areas under the ownership and/or control of Nu-West to the Forest Service and Support Agencies as may be needed to implement this AOC/CO, and shall provide access to such Parties to all records and documentation related to the conditions at the Site and the actions conducted pursuant to this AOC/CO, subject to the procedures described in paragraphs 18.3 and 18.4 for documents which Nu-West claims are privileged. Nu-West shall use its best efforts to obtain such access as may be needed, if any, to private lands not under its ownership and/or control that are necessary to perform the Work required under this AOC/CO. Nu-West will use its best efforts to have any access agreement that it obtains include such access by the Lead Agency as may be necessary for the Lead Agency and its authorized representatives, and for Support Agency personnel accompanied or authorized by the OSC, to implement the terms of this AOC/CO, and shall specify that Nu-West is not the

representative of the Lead Agency for purposes of liability associated with Site activities. Nu-West shall provide the Lead Agency with copies of all relevant access agreements prior to initiation of field activities on the area covered by the access agreement. To the extent that Nu-West is unable to obtain consensual access to any private lands, the United States and/or IDEQ may exercise their authorities to obtain access. All persons with access to the Site under this paragraph shall be required to comply with all applicable health and safety plans, provided that the federal agencies may elect, in their discretion, to adopt their own health and safety plan applicable to federal employees and contractors.

### **XVIII. SAMPLING AND DATA AVAILABILITY**

18.1 Nu-West shall notify the Lead Agency at least five (5) working days prior to conducting field events, including construction, excavation, drilling and sampling events. The five-day notice period may be shortened if the Lead Agency and Nu-West agree that this notice period would impede or prevent necessary or desirable sampling. Any Party, including its contractors, that is taking samples, will, at the request of any other Party, allow split or duplicate samples to be taken by or for the other Party of any samples collected in the course of implementing this AOC/CO.

18.2 All Parties waive any objection to the validity and admissibility of data generated in the course of performance of Work under this AOC/CO, if such data have been collected or generated in compliance with this AOC/CO, and validated in accordance with the QA/QC procedures set forth in the SAP. No Party waives its right to object to the relevance or the interpretation of, or the conclusions to be drawn from, such validated data.

18.3 Nu-West agrees not to assert any business confidentiality claim, or attorney-client or attorney work product privilege, with respect to any analytical data relating to sampling, monitoring, or other activities required to be performed under this AOC/CO, or with respect to observations of conditions at or resulting from releases at the Site made or generated in the course of the performance of the Work pursuant to this AOC/CO. Nu-West may assert a claim

of business confidentiality or other privilege covering any other type of information generated pursuant to the requirements of this AOC/CO, provided, in the case of a business confidentiality claim only, that such claim is consistent with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and is asserted in the manner described in 40 C.F.R. § 2.203. If no claim of confidentiality or other privilege accompanies the information when it is received by the Lead Agency, it may be made available to the public without further notice.

18.4 In the event Nu-West decides to withhold any document or information otherwise required to be disclosed by the provisions of this AOC/CO on the basis of a claim of privilege, it shall inform the Lead Agency of that decision and provide the Lead Agency with the date, author, recipient(s), title, and description of the document or information withheld. Nu-West shall also identify which privilege(s) it asserts applies to the document or information withheld and explain the basis for its assertion. Based on the information supplied by Nu-West, the Lead Agency shall determine whether to accept Nu-West's claim of privilege. In the event the Lead Agency disagrees with Nu-West's claim of privilege, Nu-West shall promptly disclose the document or information previously withheld, unless Nu-West disputes the Lead Agency's determination by invoking the Dispute Resolution provisions of Section XXII of this AOC/CO.

18.5 The Lead Agency and its authorized representatives, and Support Agency personnel accompanied or authorized by the OSC, shall have the authority at all reasonable times to inspect activities at the Site. The Lead Agency also may conduct such tests on the Site as deemed necessary and may use cameras, sound recording devices, or any other equipment needed to verify data submitted or monitor activities undertaken by Nu-West. Nu-West may request split or duplicate samples under paragraph 18.1 of this AOC/CO and, upon request, shall also be entitled to inspect and make copies of any test results, recordings, photographs, or other non-privileged information or materials generated during or as a result of the inspection conducted by the Lead Agency. Subject to the provisions in paragraphs 18.3 and 18.4 of this AOC/CO, the Lead Agency and its authorized representatives shall be allowed to inspect and make copies of all records, operating logs, contracts, files, photographs, sampling and monitoring data, or any other

non-privileged documents related to the Work required under this AOC/CO. Any claim that such materials may be privileged shall be governed by paragraph 18.4 of this AOC/CO. Nothing herein is intended to limit or to expand in any way the right of entry or inspection authority of the Lead Agency or the Support Agencies under CERCLA or any other applicable legal authority.

#### **XIX. WORK STOPPAGE**

19.1 The Lead Agency reserves the right to stop Work from proceeding, either temporarily or permanently, on any task, activity or Deliverable at any point during performance of the Work required under this AOC/CO if Nu-West materially fails to comply with the terms of this AOC/CO.

#### **XX. EMERGENCY RESPONSE AND NOTIFICATION**

20.1 If any incident, or change in Site conditions, during the Work conducted by Nu-West pursuant to this AOC/CO on this Site causes or threatens to cause an endangerment to the public health, welfare, or the environment, upon discovery by Nu-West, Nu-West shall immediately notify the OSC of the incident or Site conditions. If the OSC is unavailable, Nu-West shall notify the EPA Region 10, Emergency Response and Site Cleanup Unit, 24 Hour Duty Officer, (206) 553-1263. If, in the course of Nu-West's performance of the Work under this AOC/CO on the Site, the Lead Agency determines there is an imminent and substantial endangerment to human health, welfare or the environment due to unanticipated or changed circumstances at the Site, the Lead Agency shall notify Nu-West in writing of modifications to the Work Plan and Specifications, and/or the Deliverables that the Lead Agency deems necessary to address the immediate threat. Within five working days of the receipt of such notification, Nu-West shall notify the Lead Agency in writing whether it agrees to perform the work required under the proposed modifications. If the parties agree in writing to the proposed modification to the Work Plan and/or the new Deliverables, the modifications to the Work Plan and

Specifications and/or the new Deliverables shall become an attachment to this AOC/CO and incorporated herein.

20.2 If Nu-West does not agree to perform the Work required by the proposed modifications, the Lead Agency may perform the proposed Work or take any action it deems necessary, and may seek recovery of any costs it incurs performing such proposed Work pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), or other applicable law. The Parties agree that any determination by the Forest Service that an immediate response at the Site is required is governed by section 113(h) and (j) of CERCLA and shall not be subject to the dispute resolution provisions in section XXII of this AOC/CO.

20.3 Nothing in this AOC/CO shall be deemed to grant, limit or affect any authority of any agency of the United States or the State of Idaho, under any statute or agreement other than this AOC/CO, to take, direct, or order any or all appropriate action to protect human health, welfare or the environment.

## **XXI. ADDITIONAL INVESTIGATION AND ANALYSIS**

21.1 If the Lead Agency determines that additional Work on the Site is required to meet the objectives of this AOC/CO and that work is not covered by section IX above, it may notify Nu-West in writing of its determination and specify any proposed changes to any Deliverable to reflect the additional Work. Within ten (10) working days of receipt of the determination of the Lead Agency that additional Work is required, Nu-West shall provide written notification to the Lead Agency, stating whether or not it agrees to perform the additional Work. If Nu-West agrees to perform the additional Work, it shall submit to the Lead Agency, within fifteen (15) days of its notice of agreement to the Lead Agency, a revised Work Plan or other appropriate Deliverable describing and providing a schedule for performance of the additional Work. If both parties agree in writing to the revisions to the Work Plan and/or the new Deliverable, the revised Work Plan and/or the new Deliverable shall become an attachment to this AOC/CO and incorporated herein. Nu-West shall perform all agreed upon additional

tasks, including providing any additional analytical results and reports as required by the revised Work Plan and/or the new Deliverable. If Nu-West elects not to perform the additional Work, the Lead Agency may perform the Work or take any action it deems necessary, and may seek recovery of any costs it incurs performing such Work pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), or other applicable law. Any determination by the Lead Agency that additional Work is required at the Site is governed by Section 113(h) and (j) of CERCLA and shall not be subject to the dispute resolution provisions in Section XXII of this AOC/CO.

21.2 If after collection of the initial data provided in the SI Work Plan, the OSC determines that additional data is needed, consistent with the SOW, the OSC may request that Nu-West proceed with the draft and final SI Report, with the condition that Nu-West will supplement the SI Report with the additional data collected under a modified SI Work Plan. In addition, if prior to the completion of Work required by the SI Work Plan, the Lead Agency determines that sufficient data has been collected with respect to a particular issue or portion of the Site, then the Lead Agency may provide that additional data with respect to such issue or portion need not be collected and may then accelerate the SI report and EE/CA process with respect to that particular portion or issue. The OSC's election to undertake this approach may result in two or more EE/CAs, the combination of which will address all pathways for the release or threatened release of hazardous substances, pollutants and deleterious materials at the Site. Nu-West will complete the initial EE/CA on the schedule provided in the SOW. Nu-West will complete subsequent EE/CAs, if any, on a schedule provided in a revised EE/CA Work Plan.

## **XXII. DISPUTE RESOLUTION**

22.1 The dispute resolution procedures in this Section are the exclusive mechanism for resolving disputes arising under this AOC/CO. A dispute shall be considered to have arisen when Nu-West serves the Lead Agency with a written Notice of Dispute. A Notice of Dispute shall be served by facsimile, overnight mail, or some equivalent service. For the purposes of this Section XXII, only, the Lead Agency for disputes over costs shall be the Agency whose claimed costs are subject to dispute.

22.2 In the first instance, the Parties shall attempt to resolve any dispute arising under this AOC/CO by informal negotiations. The period for informal negotiations shall not exceed thirty (30) days from the date of receipt of the Notice of Dispute, unless the Lead Agency and Nu-West agree in writing to modify the period for informal negotiations. If the Parties fail to resolve the dispute informally, the formal dispute resolution procedure in the following paragraphs shall apply.

22.3 In the event the Parties cannot resolve the dispute through informal negotiations, then the position of the Lead Agency shall be binding unless, within seven (7) days after the conclusion of the informal negotiations period, Nu-West invokes the formal dispute resolution procedures of this section by serving on the Lead Agency a written Statement of Position on the matter in dispute. Nu-West's written Statement of Position shall be sent by facsimile, overnight mail, or some equivalent service, and shall define the dispute and state the basis of Nu-West's objections to the position of the Lead Agency.

22.4 Following receipt of Nu-West's Statement of Position, the Lead Agency shall promptly provide the appropriate supervisory office with a copy of Nu-West's Statement of Position and a written response to that Statement. The Lead Agency shall simultaneously send its response to Nu-West by facsimile, overnight mail or some equivalent service. The appropriate supervisory office is the Region 4 Regional Forester for the Forest Service, the Director of the Department of Environmental Quality for IDEQ (disputes over IDEQ costs) and

the Region 10 Director of Environmental Cleanup for EPA (disputes over EPA costs) and the Region 1 Regional Director or designee for FWS (disputes over FWS costs).

22.5 Following receipt of Nu-West's Statement of Position and the Lead Agency's response, the appropriate supervisory office shall make a final determination resolving the matter in dispute.

22.6 Any decision made by the Forest Service, EPA or FWS pursuant to this section shall not constitute a final agency action subject to judicial review unless and until the United States commences a judicial action to enforce this AOC/CO, in which case any challenge to the Regional Forester's, EPA Director's or FWS Regional Director's, or designee's, final determination shall be subject to the Administrative Procedures Act, 5 U.S.C. §§ 702 *et seq.*, or Section 113(j) of CERCLA, 42 U.S.C. § 9613(j).

22.7 Any decision made by the IDEQ pursuant to this section shall not constitute a final agency action subject to judicial review unless and until the IDEQ commences a judicial action to enforce this AOC/CO, in which case any challenge to the Director's final determination shall be subject to the Idaho Administrative Procedures Act, Idaho Code § 67-5273.

22.8 Nothing in this AOC precludes the parties from agreeing to use other forms of alternative dispute resolution in lieu of the procedures described in paragraphs 22.3 - 25.5.

22.9 Upon completion of all dispute resolution procedures under this section, Nu-West shall proceed in accordance with the final determination regarding the matter in dispute. If Nu-West does not perform any required Work in accordance with the final determination, the Lead Agency may perform the Work and/or pursue any other appropriate relief, including judicial enforcement of this AOC/CO pursuant to Section 122(d)(3) of CERCLA, 42 U.S.C. § 9622(d)(3), and cost recovery pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) or other applicable law.

22.10 The invocation of the dispute resolution provisions of this AOC/CO shall not extend, postpone or affect in any way any unrelated obligation of Nu-West under this AOC/CO not directly in dispute, unless the Lead Agency agrees in writing otherwise. Stipulated penalties

with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of the AOC/CO. In the event Nu-West does not prevail on the disputed matter, stipulated penalties shall be assessed and paid as provided in Section XXVI, unless otherwise agreed by the parties in writing.

### **XXIII. FORCE MAJEURE**

23.1 Delays or inability to perform any of the requirements of the AOC/CO within the time limits prescribed shall not be a violation of the AOC/CO where performance is prevented or delayed by a force majeure event. Force majeure is defined as any event arising from causes beyond the control of Nu-West, of any entity controlled by Nu-West, or of Nu-West's contractors, that delays or prevents performance of any obligation under this AOC/CO, despite Nu-West's best efforts to fulfill the obligation. Force majeure does not include the financial inability of Nu-West to complete performance of the obligation or increased cost of performance. Nu-West shall have the burden of proving force majeure by a preponderance of the evidence.

23.2 If any event occurs that may materially delay performance of any obligation under this AOC/CO or submittal of any Deliverable past the applicable deadline, Nu-West shall notify the OSC within twenty-four (24) hours of the time Nu-West knew that the event would delay such performance or submittal. Within five (5) business days thereafter, Nu-West shall notify the Lead Agency in writing of the reasons for the delay, its anticipated length, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with these requirements shall waive any claim of force majeure by Nu-West.

23.3 The OSC shall notify Nu-West in writing of the determination by the Lead Agency as to whether force majeure applies to the event or circumstances within seven (7) days or, upon notice, such additional time the Lead Agency reasonably needs to respond, after receipt of written notice from Nu-West. If the Lead Agency determines that the delay has been or will be caused by circumstances constituting a force majeure, the due date for each uncompleted task

in this AOC/CO shall be extended for a sufficient period to complete the tasks that were delayed or prevented. Such period shall be at least equal to the delay resulting from the force majeure circumstance. If the Lead Agency disagrees with Nu-West's force majeure claim, or if there is no agreement on the length of an extension of time, the dispute shall be resolved in accordance with the dispute resolution provisions in Section XXII of this AOC or the stipulated penalties provisions of Section XXVI, as appropriate.

#### **XXIV. REIMBURSEMENT OF RESPONSE COSTS**

24.1 Except as specified in this section XXIV, this AOC does not address or resolve claims that the United States, the Forest Service or other federal agencies may have against Nu-West, or that Nu-West may have against the United States, the Forest Service or other federal agencies, including claims under Section 107 and 113 of CERCLA, for the recovery of costs incurred by the United States, the Forest Service, other federal agencies, or Nu-West in responding to the release or threatened release of hazardous substances at the Site, including but not limited to costs incurred in performing the Work pursuant to this AOC. Each Party hereto expressly reserves any such claims and expressly reserves any defenses it may have to such claims.

24.2 REIMBURSEMENT OF EPA COSTS. Notwithstanding any other provision of this AOC/CO, Nu-West shall reimburse EPA for all Future Response Costs incurred by EPA in connection with this AOC/CO. "Future Response Costs", for the purposes of this section XXIV only, shall mean all direct and indirect costs incurred by EPA after October 31, 2003, in connection with the development, implementation or enforcement of this AOC/CO in support of the Lead Agency, including but not limited to, negotiation of the AOC/CO, oversight and review of the Work performed under this AOC/CO as set forth and described in the SOW, communications regarding disputes arising under this AOC/CO, the exercise of EPA authority to obtain access, the performance of an emergency response or additional Work, and any other costs incurred in support of the Lead Agency in connection with this AOC/CO.

24.2.1 For purposes of this Section, Interest shall accrue at the rate established under Section 107(a) of CERCLA, 42 U.S.C. § 9607. The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

24.2.2 EPA shall submit to Nu-West on a periodic basis a billing statement for Future Response Costs. All billing statements shall include a SCORPIOs report or other accounting certified by EPA, which shall itemize and describe the specific costs that are reimbursable hereunder.

24.2.3 Within thirty (30) days of receipt of each billing statement, Nu-West shall remit a certified or cashier's check or make payment by wire transfer for the total amount of such costs, except as provided in paragraph 25. Checks shall be made payable to the Hazardous Substances Superfund and shall be accompanied by a statement referencing SE Idaho/No. Maybe Mine, Site ID No. 10BS, EPA Docket No. CERCLA-10-2004-0059, In the Matter of North Maybe Mine, Nu-West Mining, Inc. and Nu-West Industries, Inc. Checks shall be sent to:

Mellon Client Service Center  
EPA Region 10  
500 Ross Street  
P.O. Box 360903M  
Pittsburgh, Pennsylvania 15251-6903

24.2.4 At the time of payment, Nu-West shall send notice that payment has been made to: Financial Management Officer (Mail Code OMP-146), USEPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

24.2.5 The total amount to be paid by Nu-West pursuant to this section shall be deposited in the SE Idaho/North Maybe Mine Special Account within the Hazardous Substances Superfund to be retained and used to conduct or finance response actions at or in connection with the Site.

24.2.6 In the event that payment for Future Response Costs is not made within forty-five (45) days of receipt of the billing statement, Nu-West shall pay Interest on the unpaid balance. Interest shall begin to accrue on the date of receipt of the billing statement,

notwithstanding any dispute or objection to any portion of the cost, and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to EPA by virtue of Nu-West's failure to make timely payments under this Section, including but not limited to, the payment of stipulated penalties pursuant to Section XXVI.

24.3 REIMBURSEMENT OF FWS COSTS. Nu-West hereby agrees to commit the sum of up to fifteen thousand dollars (\$15,000.00) per year, beginning on the Effective Date of this AOC/CO, to pay FWS' reasonable Costs. "Costs", for the purposes of this paragraph, shall mean all direct and indirect costs incurred in connection with FWS' support of Work performed by or on behalf of the Forest Service under this AOC/CO, as set forth and described in the SOW, including, but not limited to, time and travel costs associated with oversight of the work performed under the SOW; contractor costs; compliance monitoring, including the collection and analysis of split samples; site visits; discussions regarding disputes that may arise under this AOC/CO; review and approval or disapproval of reports; and any other costs directly incurred in overseeing this AOC/CO. No later than December 1 of each year, FWS shall submit to Nu-West an estimated annual Cost budget. Within 30 days of receipt of the estimated annual budget, Nu-West shall deposit with the FWS an amount equal to the estimated annual budget or \$15,000.00, whichever is less.

24.3.1 The FWS shall use such monies to establish an account fund dedicated solely to its activities associated with this AOC/CO, in accordance with the Appropriations Act for the Department of the Interior and Related Agencies of 2000, Pub. L. 106-113, 113 Stat. 150, and other applicable statutes, regulations and guidance. Within 180 days of the execution of this AOC/CO, and every 180 days thereafter, the FWS shall provide Nu-West an accounting of its costs, including supporting cost summaries.

24.3.2 Payments to FWS shall be made by certified or cashier's check made payable to the United States Fish and Wildlife Service and mailed to:

U.S. Fish & Wildlife Service  
ATTN: Debra Freeman  
911 N.E. 11th Avenue  
Portland, OR 97232-4181

Each check shall reference:

Site Name: Southeast Idaho Phosphate Mining - North Maybe AOC

24.3.3 Within 120 days after completion of FWS support activities under this AOC/CO, FWS shall provide Nu-West with a final cost accounting. In the event that the monies remain in the Fund, the FWS shall reimburse Nu-West within 30 days of submission of the final cost accounting.

24.4 Nu-West may dispute payment of any portion of EPA and/or FWS's Future Response Costs or Costs, but only on the basis of accounting errors, the inclusion of costs outside the scope of this AOC/CO, the inclusion of costs that have not been paid or approved for payment by EPA and/or FWS, or the inclusion of costs inconsistent with the NCP. Disputes regarding EPA and FWS Future Response Costs or Costs will be resolved using the dispute resolution procedures described in Section XXII. Any objection by Nu-West shall be made in writing within forty-five (45) days of receipt of the billing statement and shall specifically identify the disputed costs and the basis of the dispute. Disputed costs shall be paid by Nu-West into an interest-bearing escrow account while the dispute is pending. All undisputed costs shall be remitted by Nu-West in accordance with the provisions in the preceding paragraphs of this Section. In any dispute resolution proceeding, Nu-West shall bear the burden of establishing an accounting error, the inclusion of costs inconsistent with the NCP, the inclusion of costs for work outside the scope of this CO/AOC or the inclusion of costs that have not been paid, or approved for payment by EPA or FWS. If EPA or FWS prevails in the dispute resolution proceeding, Nu-West shall remit the amount(s) in question, including any applicable interest, within 30 days after receipt of the final determination. If Nu-West prevails concerning any aspect of the contested costs, Nu-West shall pay that portion of the costs for which it did not prevail in the manner

described in the preceding sentence. Nu-West shall be disbursed any balance of the escrow account.

## **XXV. REIMBURSEMENT OF STATE RESPONSE COST**

25.1 Response costs incurred by IDEQ with respect to the Site under this AOC/CO will be reimbursed in the following manner:

25.1.1 Nu-West will pay the sum of Five Thousand Dollars (\$5,000.00) to IDEQ to be deposited in a separate account established for this site.

25.1.2 Thereafter, IDEQ shall provide a quarterly accounting and invoice to Nu-West of actual response costs incurred by IDEQ.

25.1.3 Within 30 days of Nu-West's receipt of the IDEQ's quarterly accounting invoice, Nu-West shall reimburse the State for all costs reflected in the accounting invoice.

25.1.4 The initial deposit will be returned to Nu-West within sixty (60) days of the date IDEQ incurs final response costs.

25.2 IDEQ response costs shall include IDEQ costs incurred after November 24, 2003.

25.3 All payments necessary to IDEQ shall be made to:

Administrative Services-Accounts Receivable  
Idaho Department of Environmental Quality  
1410 N. Hilton  
Boise, ID 83706-1255

25.4 Nu-West may dispute payment of any portion of IDEQ's response costs, but only on the basis of accounting errors, the inclusion of costs outside the scope of this AOC/CO, the inclusion of costs inconsistent with State regulations or the inclusion of costs that have not been paid or approved for payment by IDEQ. Disputes regarding oversight costs will be resolved using the dispute resolution procedures described in Section XXII. Any objection by Nu-West shall be made in writing within thirty (30) days of receipt of the Quarterly Billing and shall specifically identify the disputed costs and the basis of the dispute. All undisputed costs shall be remitted by Nu-West in accordance with the provisions in the preceding paragraphs of this

section. In any Dispute Resolution proceeding, Nu-West shall bear the burden of establishing its contentions as to inappropriate costs. If the IDEQ prevails in the Dispute Resolution proceeding, Nu-West shall remit the amount(s) in question, including any applicable interest, within thirty (30) days after receipt of the final determination, subject to the provisions of Section 22.7 above.

## **XXVI. STIPULATED PENALTIES**

26.1 Unless there has been a written modification of a compliance date or other requirement of this AOC/CO by the Lead Agency, or a force majeure event as defined herein, in the event Nu-West fails to meet any requirement of this AOC/CO, Nu-West shall pay stipulated penalties in the amount of \$1,000.00 per day, per violation for the 1<sup>st</sup> through 14<sup>th</sup> days of noncompliance; \$3,000.00 per day, per violation for the 15<sup>th</sup> through 30<sup>th</sup> day of noncompliance; and \$7,500.00 per day, per violation for the 31<sup>st</sup> day of noncompliance and every day thereafter. Compliance by Nu-West shall include complete and timely performance of each activity required under this AOC/CO or complete and timely performance of all Work described in any plan, statement or Deliverable approved under this AOC/CO.

26.2 All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission of a Deliverable under Section IX (Work to be Performed), during the period, if any, beginning on the 11<sup>th</sup> day after the Lead Agency's receipt of such submission until the date that the Lead Agency notifies Nu-West of any deficiency; and (2) with respect to a matter subject to Dispute Resolution (Section XXII), during the period, if any, beginning on the 11<sup>th</sup> day after the Negotiation Period begins until the date that the Lead Agency issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this AOC/CO.

26.3 The Lead Agency will advise Nu-West in writing of any stipulated penalties owed by Nu-West pursuant to this section. All penalties shall be paid to the Lead Agency or its

designee by certified or cashier's check within thirty (30) days of the date of receipt of the demand for payment, unless Nu-West has properly disputed such demand or related notice of violation. Interest shall begin to accrue on the unpaid balance at the end of the thirty (30) day period. Interest shall accrue at the rate provided in applicable law. Payment shall be made in accordance with instructions provided by the Lead Agency.

26.4 The stipulated penalties provided for in this section of the AOC/CO shall be the exclusive monetary penalty for violations of this AOC/CO that are not also violations of federal or state statutes or regulations. The provisions in this section, however, do not preclude the Forest Service, EPA or IDEQ from pursuing any other remedies or sanctions that may be available by reason of Nu-West's failure to comply with any of the requirements of this AOC/CO, nor shall payment of stipulated penalties relieve Nu-West of the responsibility to comply with any requirement of this AOC/CO. Notwithstanding any other provision of this section, the Lead Agency may, in its unreviewable discretion, waive any portion of the stipulated penalties that have accrued pursuant to this AOC/CO.

## **XXVII. OTHER CLAIMS**

27.1 By entering into this AOC/CO, the Forest Service, IDEQ and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Nu-West. No Party shall be deemed to be a party to any contract entered into by any other Party or its contractors to carry out actions pursuant to this AOC/CO.

27.2 Nu-West hereby covenants not to sue and agrees not to assert any cause of action or claim arising out of any action performed under this AOC/CO against the United States for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507), pursuant to Sections 106(b)(2), 107, 111, 112, 113 of CERCLA or any other provision of law.

**XXVIII. RESERVATION OF RIGHTS**

28.1 Except as expressly provided in this AOC/CO, the United States reserves all rights, claims and defenses it may have, including the right to bring an action against Nu-West under Section 107 and 113 of CERCLA, 42 U.S.C. § 9607 and 9613, for recovery of any unreimbursed response costs incurred in connection with the Site. Nothing in this AOC/CO shall be construed as releasing Nu-West from liability, if any, for its actions. The United States reserves the right to take any enforcement action pursuant to CERCLA or any other legal authority for relief, including, but not limited to, injunctive relief, for any violation of this AOC/CO, except as provided in paragraph 26.4. Furthermore, nothing in this AOC/CO shall be construed to limit the power and authority of the United States to take, direct, or order all actions necessary to protect the public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. For the purpose of this paragraph only, pollutants or contaminants are as defined in CERCLA.

28.2 Except as expressly provided in this AOC/CO, Nu-West reserves all rights, claims and defenses it may have, including the right to bring an action against the United States or the State of Idaho under CERCLA for recovery of any response costs incurred in connection with the Site under Sections 113 and 120(a) of CERCLA, and the right to bring claims against the United States under Chapter 171 of Title 28 of the United States Code. Except as expressly provided in Section XXVII, Other Claims, nothing in this AOC/CO shall be construed as releasing the United States or the State of Idaho from any liability for any of its actions. Nu-West also reserves any defense that may be asserted by law in response to any enforcement action taken pursuant to the United States' and/or the State of Idaho's reservation of rights in paragraphs 28.1, 28.3 or 28.4.

28.3 The IDEQ expressly reserves the right to seek further relief to address contamination or pollution resulting from the matters addressed herein. Nothing herein shall be

deemed to bar such further relief and this agreement shall not operate pursuant to Idaho Code 39-108(3)(a)(v) to preclude the IDEQ from seeking additional relief.

28.4 Except as expressly provided in this AOC/CO, the IDEQ reserves all rights, claims and defenses it may have, including the right to bring an action against Nu-West under Section 107 and 113 of CERCLA, 42 U.S.C. § 9607 and 9613, or Idaho Code 39-108(3)(a)(v) and 39-4413(A)(1)(d) for recovery of any unreimbursed response costs incurred in connection with the Site. Nothing in this AOC/CO shall be construed as releasing Nu-West from liability, if any, for its actions. The IDEQ reserves the right to take any enforcement action pursuant to CERCLA or any other legal authority for relief, including, but not limited to, injunctive relief, for any violation of this AOC/CO, except as provided in paragraph 26.4. Furthermore, nothing in this AOC/CO shall be construed to limit the power and authority of the IDEQ to take, direct, or order all actions necessary to protect the public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants at or from the Site.

#### **XXIX. INDEMNIFICATION**

29.1 Nu-West agrees to indemnify and hold the United States and the State of Idaho and their agencies, departments, agents and employees, harmless from all claims of third parties arising from acts or omissions of Nu-West or those acting on its behalf, including its officers, employees, agents, contractors, subcontractors, or assigns, in carrying out activities under this AOC/CO. Nu-West has an affirmative duty to conduct all activities under this AOC/CO so as to protect from injury and damage the lands of the United States affected by the contamination at or from the Site. Damage includes, but is not limited to, fire suppression costs and all costs and damages associated with restoration or rehabilitation of natural resources associated with Nu-West's activities on the Site under this AOC/CO. Nu-West shall be liable for damage to all roads and trails of the United States caused by the use of Nu-West, or those acting on its behalf, except that damage shall not include reasonable and ordinary wear and tear.

**XXX. NOTICE OF COMPLETION**

30.1 Upon completion of all requirements under this AOC/CO, Nu-West shall certify in writing to the Forest Service that all requirements under this AOC/CO, including any additional Work and payment of stipulated penalties, have been completed. The certification shall be signed by a representative of Nu-West with the requisite knowledge and authority, and shall include the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete." The Lead Agency, if it agrees with Nu-West's certification, will so notify Nu-West in writing, and this AOC/CO, with the exception of any continuing obligations, shall be terminated. For the purposes of this section, continuing obligations shall include, but not be limited to, the following obligations contained in this AOC/CO: Section XII (Record Preservation), Section XXVIII (Reservation of Rights) and Section XXIX (Indemnification). If the Lead Agency determines that any requirements of this AOC/CO have not been completed by Nu-West, the Lead Agency will notify Nu-West in writing and specify the deficiencies. Nu-West shall correct such deficiencies in accordance with the notice of the Lead Agency. Failure by Nu-West to correct such deficiencies shall be a violation of this AOC/CO, subject to the provisions of Section XXII.

**XXXI. MODIFICATION**

31.1 Modification to any plan or schedule may be made, in writing, by the OSC or at the OSC's direction. If the OSC makes an oral modification, it will be memorialized in writing within ten (10) days; provided, however, that the modification effective date shall be the date of the OSC's oral direction. Any other requirements of this AOC/CO may be modified in writing by mutual agreement of the parties.

**XXXII. MISCELLANEOUS**

32.1 During the performance of this AOC/CO, Nu-West agrees that in connection with the performance of Work under this AOC/CO, Nu-West shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age or handicap. Nu-West shall include and require compliance with the above nondiscrimination provision in any contract or subcontract made with respect to this AOC/CO. The Lead Agency shall have the right to enforce the foregoing nondiscrimination provisions by suit for specific performance or any other remedy under the laws of the United States or the state in which the breach or violation occurs.

32.2 If, while implementing the terms of this AOC/CO, Nu-West discovers any objects of historic or scientific interest, it shall notify the OSC and leave such discoveries intact until and unless otherwise instructed by the OSC. For the purposes of this paragraph, objects of historic or scientific interest include, but are not limited to, historic or prehistoric ruins, fossils, or artifacts. Compliance with any protective and mitigative measures specified by the OSC shall be Nu-West's responsibility.

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE REGION 4

By: Warbert Kulesza  
for, Name: Jack Troyer  
Title: Regional Forester  
Date: 3/25/04

SODA SPRINGS R.D.	
APR 12 2004	
X-Action	
✓ Info	
DFR	
Forester I	
Forester II	
Range Cons. I	
Range Cons. II	
Range Cons. III	
Wildlife Biologist	
Geologist I	
Mining Engineer	
Geologist II	
Geologist III	
AWO	
Fire II	
SCS	
Area Clerk	

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

By: *Nicholas Ceto* for

Name: Nicholas Ceto  
Title: Program Manager, Hanford Project Office

Date: April 8, 2004

On behalf of the United States, and its agencies signatory hereto, I approve and concur in this Administrative Order on Consent/Consent Order involving the North Maybe Phosphate Mine Site.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice



U.S. Department of Justice

Environment and Natural Resources Division

093 48

Environmental Enforcement Section  
P.O. Box 7611  
Washington, DC 20044-7611

Telephone (202) 514-5271  
Facsimile (202) 353-0297

May 14, 2004

Ron McClain  
Deputy Assistant General Counsel  
United States Department of Agriculture  
Room 3351  
14<sup>th</sup> & Independence Avenue, S.W.  
Washington, D.C. 20250

Re: Request for concurrence in Administrative Order on  
Consent, North Maybe Canyon Phosphate Mine

Dear Mr. McClain:

This is to advise you that pursuant to section 4(b)(1) of Executive Order 12580 (January 23, 1987), as amended by Executive Order 13016 (August 28, 1996), the United States Department of Justice, Environment & Natural Resources Division, concurs in the attached Administrative Order on Consent with Nu-west Mining, Inc. and Nu-West Industries, Inc. regarding the performance of an Engineering Evaluation/Cost Analysis at the North Maybe Canyon Phosphate Mine, outside Soda Springs, Idaho.

Sincerely,

CATHERINE R. MCCABE  
Deputy Section Chief  
Environmental Enforcement  
Section

cc: James Alexander, Esq. (US Forest Service-R.4)  
Lisa Castanon, Esq. (U.S. EPA - R.10)  
Frederick Phillips, Esq. (USDOJ-EES)

IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

By: 

Name: C. Stephen Allred

Title: Director

Date: March 24, 2004

093 50

Nu-West Mining, Inc.

By: Charles H Ross

Name: Charles H Ross

Title: President

Date: March 23, 2004

Nu-West Industries, Inc.

By: Jon D. Goode  
Name: Jon D. Goode  
Title: Vice President  
Date: March 23, 2004

**SCOPE OF WORK  
SITE INVESTIGATION EECA  
NU-WEST INDUSTRIES INC  
NORTH MAYBE MINE**

## 1.0 INTRODUCTION

This Scope of Work (SOW) for the North Maybe Mine Site (the Site) outlines the tasks necessary to complete a Site Investigation (SI) and Engineering Evaluation/Cost Analysis (EE/CA) for the North Maybe Mine. Preparation of the SI and EE/CA will be conducted according to the guidance provided in EPA document "Guidance on Conducting Non Time-Critical Removal Actions under CERCLA EPA540-R-93-057".

All portions of the mine and adjacent public and private lands will be evaluated in the SI as described by the following sections of this SOW and the Administrative Order on Consent for the North Maybe Mine.

### 1.1 North Maybe Mine Site

North Maybe Phosphate Mine and the waste rock piles associated with the mine are located approximately 25 miles northeast of Soda Springs, Idaho. The Site shown in Figure 1 is marked with a boundary to indicate an area potentially impacted by the North Maybe Mine, however, with further investigation the site could be modified to reflect the aerial extent of contamination from the mine beyond the boundary depicted. Portions of Federal Phosphate Leases I-04 and I-8289 are impacted by activities associated with historic operations at the North Maybe mine. Investigation activities will define the extent of contamination, if any, and all suitable areas in very close proximity to the contamination necessary for response action implementation.

## 2.0 SCOPING

Scoping and planning activities for the Site will utilize the data/findings of the Area Wide Investigation (AWI), Area Wide Human Health and Ecological Risk Assessment (AWHHERA) and Area Wide Risk Management Plan (AWRMP) directed by IDEQ, as well as the available information specific to environmental conditions at the North Maybe Mine Site. The findings of the AWI studies along with existing information for the Site will be used to identify data/information gaps to be filled through the SI.

All currently available information will be coupled with information collected through the investigations outlined in this SOW to provide a thorough characterization of the nature and extent of hazardous substances across the Site.

The activities necessary for scoping, planning and conducting the SI and EE/CA for the Site are further detailed in the following sections. Certain details of the work described below, such as the number and locations of sampling points and parameters, may be modified or refined based on further review of existing information in conjunction with the development of the SI and EE/CA Work Plan and Sampling and Analysis Plan.

## 2.1 North Maybe Mine

- A. Respondents will prepare and submit a Work Plan for performing an SI and an EE/CA (the SI EE/CA Work Plan).
- B. The SI EE/CA Work Plan will describe the management structure, including points of contact, responsibilities, data handling, reporting, pre-scheduled meetings, etc.
- C. The SI EE/CA Work Plan will provide a comprehensive Site description, including, but not limited to:

### Background

- Site history and setting;
- Historical operations/ownership (adjacent/surrounding owners, potential receptors, etc.);
- Existing topographic features/modifications (pre- and post-mining land surfaces, area of features, elevations, design and as-built construction specifications of all overburden disposal areas/fills, etc.) and additional data (estimated waste quantities, locations, design, volume, and holding ponds /catchments); and
- Associated ancillary Site facilities no longer in use (maintenance facilities, industrial operations, transportation corridors, etc.) and any known or recorded contaminant releases.

Identification and Evaluation of Existing Information/Data

- The existing relevant Site-specific information/data (i.e. hydrology, climatology, geology, hydrogeology and ecology, monitoring data and background sampling data, etc.) will be presented and evaluated. Categories of existing information sources to be considered include but are not limited to the following:
    - Data from ongoing monitoring of environmental conditions associated with the permitted mine operations;
    - Information/data collected under other regulatory programs (e.g., CWA monitoring, IDEQ TMDL activities and ATSDR studies);
    - Site-specific and relevant regional data/information from the AWI generated by both IDEQ and the Idaho Mining Association;
    - Independent studies conducted by academic or special interest groups (e.g., Rocky Mountain Research Station studies); and
    - Applicable information from the South Maybe Canyon investigation.
  - Before use of existing information, the data will be reviewed to confirm that the data quality objectives for the SI and EE/CA are met.
- D. The SI EE/CA Work Plan will present information currently available for the Site in a format consistent with the SI Report and will describe the Site investigations to be performed, and specify the approach, schedule and rationale for performing each activity. The available information will be utilized to characterize the nature and extent of constituents of concern (COCs)(as defined in the AWRMP) and to develop a Conceptual Site Model(s) to identify the sources, pathways and receptors of concern. The existing information in conjunction with the Conceptual Site Model(s) will be used to identify data gaps for the SI and EE/CA. Potential transport and exposure pathways, and receptors will be addressed in terms of the characteristics of COCs, sampling strategies and methodologies, environmental target media, analytical procedures, data quality objectives, and the data evaluation process and site-specific risk assessment protocols for human and ecological risk assessment. The following general objectives have been identified for the SI:
- Identify and clearly define the primary sources of selenium and other COCs released to the environment.
    - The objective is to provide detailed characterization of source materials at the Site. Previous studies and existing mine records may provide the additional characterization data needed to complete this objective.
  - Identify and describe the mechanisms for releases of selenium and other COCs from these sources.

- Release of selenium from overburden occurs by oxidation of sulfides, elemental selenium, and selenides. When exposed to air and/or water selenium mobilization occurs via continued oxidation of selenium to increasingly soluble /mobile compounds. Dissolution of soluble selenium-bearing solids in water facilitates plant uptake of bioavailable forms. Contact with air promotes rapid sulfide oxidation; contact with water then mobilizes selenium. An objective is to characterize the source-specific environmental conditions that promote selenium mobility in the environment and those that mitigate selenium release, biologic uptake and transport. Previous studies, including the Area-Wide Investigations (AWI) and South Maybe Canyon Site Investigation, may provide useful information in meeting this objective.
- Characterize the current extent of transport of selenium and other COCs from the identified sources through additional investigations of surface water, sediment, groundwater, soil and vegetation.
  - Transects, or other gradational sampling approaches, will be utilized to fill data gaps regarding the extent of impacts to soil and vegetation. The extent of transport will be characterized through comparison to background and/or baseline conditions as well as comparison to regulatory standards/criteria, such as water quality standards and/or risk-based criteria presented in the AWRMP or as otherwise specified by the Lead Agency.
  - Ongoing environmental monitoring programs, including routine aquatic monitoring programs, provide data for characterizing the extent of transport from sources, especially transport via surface water; but the extent of transport has not been fully characterized for certain pathways. Additional data collection to evaluate subsurface transport of selenium in groundwater is likely to be necessary.
- Identify pathways of exposure for a range of ecological receptors and the potential for human exposure to evaluate the baseline ecological and human health risks.
  - Clear identification of likely receptors and probable exposure scenarios will provide a basis for identifying data needs and designing data collection tasks for the SI. A screening-level risk assessment will be used to preliminarily identify receptors and exposure scenarios as well as assess data needs for risk management decisions.
  - A preliminary assessment of data needs for evaluating pathways of exposure includes additional characterization of selenium levels in surface and ground

waters, soil, sediment and vegetation in source areas and areas affected by transport from those sources.

- E. Upon completion of the SI, the EE/CA portion of the SI EE/CA Work Plan will describe the identification and evaluation of removal actions alternatives to be implemented. The SI EE/CA work plan should describe any necessary field studies/pilot testing processes, procedures for identification and comparative analysis of Non-Time-Critical Removal Actions, and a proposed schedule of the EE/CA process. A suggested format for the EE/CA portion of the SI EE/CA Work Plan is provided in Attachment A.
- F. Opportunities may arise to address known releases prior to completion of the entire SI and Final EE/CA. Early Actions may be conducted as the SI is being conducted to address localized areas of identified contamination as they arise. Once the decision to implement an interim action is agreed upon by the project leaders, an interim EE/CA will be completed to review the interim removal action alternatives.

### 3.0 PLANNING

#### 3.1 North Maybe Mine

- A. Respondent will prepare and submit a Sampling and Analysis Plan (SAP) comprised of a Field Sampling Plan (FSP), Health and Safety Plan (HSP), and Quality Assurance Project Plan (QAPP) for implementation of the SI at the Site.
- B. The SAP will specify the methodologies, protocols and locations for sample collection and other data gathering activities. It will summarize sampling objectives, frequency, equipment, sample designation, handling and analysis methods that will meet the data quality objectives.
- C. The HSP will be prepared in conformance with the Respondent's health and safety program, and in compliance with OSHA regulations and protocols. The lead agency will review this document to ensure the necessary elements are included to provide for the protection of human health and the environment, however, the agency will not "approve" the Respondent's plan.
- D. The QAPP will describe project objectives and organization, functional activities, and quality assurance and quality control (QA/QC) procedures to be used to achieve the data quality objectives. It will address sampling procedures, custody, analytical procedures, data reduction, data validation, reporting and personnel qualifications. Each laboratory to be used will participate in a Quality Assurance/Quality Control program equivalent to that specified in the document "EPA Guidance on Preparation of Laboratory Quality Assurance Plans", EPA/600/R-98/018, and EPA

Requirements for Quality Assurance Project Plans, EPA/240/B-01/003. Acceptable procedures for selenium testing for each media will be developed by the lead agencies and mining company technical representatives. All Respondent-generated data reporting documents will append raw lab-reported data, if requested by the reviewing agencies.

- E. The Community Relations Plan and public involvement activities for the SI and EE/CA process will be developed and managed by the lead agency.

#### 4.0 INVESTIGATIONS/REPORTING

Consistent with the AOC, the SOW for the Site provides for investigations to support a characterization of environmental conditions including any supplemental human and ecological risk assessments. The findings of these investigations and assessments will be provided to the lead agency for the Site. This information will be used as a basis to conduct the risk management and engineering analysis and to prepare the resultant EE/CA report. From the EE/CA, the lead agency will decide which alternatives to implement based on public involvement and compliance with the appropriate regulations.

##### 4.1.1 Site Investigation (SI)

- A. The SI will collect and report the data/information necessary to physically characterize the sources of contamination, the nature and extent of on-site and off-site impacts (human health and ecological risks), and to support the EE/CA, field/pilot studies and all other subsequent activities. Site Investigation tasks should include a comparison of the site against the AWRA and AWRMP. Risk related to releases or threatened releases should be compared to the AWRA and AWRMP to assess their applicability to this site. Sensitive populations and receptors developed with concurrence from the Shoshone-Bannock Tribes in the AWRA and AWRMP will be considered by the respondent in the preparation of a site-specific Risk Assessment.

A suggested format for the SI Report is provided in Attachment A.

- B. Respondent will characterize Site geology, hydrology and hydrogeology (groundwater) to allow for description of seasonal flow rates/concentrations, hydraulic gradients/flow directions, water-bearing units and aquacludes, receiving streams/loading calculations, seeps, springs, drains, pits/ponds, and otherwise as needed to specifically describe COC contributions, transport from sources, and identify potential receptors. Groundwater monitoring wells may be installed to address data needs related to characterizing the COC contributions to underlying aquifers from the Site. The ground water sampling schedule will be defined in the SAP.
- C. Respondent will characterize the nature and extent of all surface water and ground water impacts for the following minimum COCs: cadmium, chromium, nickel, selenium, vanadium and zinc.

February 17, 2004

- Surface and ground water samples will be analyzed as either dissolved or total recoverable fraction as appropriate for compliance criteria comparisons. These data will be used in the SI. Impacts to surface water outside of the Site will be evaluated through sampling and analysis to describe transport and fate of COCs as well as calculation of mass flux of COCs from the Site.
- D. Respondent will characterize the nature and extent of impacts in soils, sediments, vegetation and other applicable media to describe, at a minimum, the locations of and conditions within mine waste dumps and fill areas, reclaimed areas, and seepage and drain outfall areas in a manner that identifies any spatial trends, sub-unit characteristics and potential hot spots based on AWRMP action levels. Soil, sediment and vegetation samples will be analyzed for the minimum COCs and may be analyzed for other relevant parameters.
- E. Respondent should be prepared to perform any flora/fauna surveys, ecological studies and/or biological sampling required for supplemental risk assessment protocols and/or other Site-specific needs to include temporal data collection for trend analysis. Wetlands outside the boundaries of USFS lands potentially impacted by releases of COCs from the Site will be identified using a combination of site inspections, aerial photography and wetland inventory databases (including AWI delineations), and will be fully characterized with regards to the nature and extent of COCs. Any impacted wetlands will be delineated by a soil scientist and described in terms of functional analysis, dominant wildlife and vegetation species, soil units, hydrology, wildlife use, etc.
- F. Respondent will conduct a cultural resource survey and prepare an inventory for submission and approval by the State Historic Preservation Officer.
- G. Respondent will identify and establish background levels for COCs in each environmental medium investigated by selecting local, unimpacted reference control areas or through the use of approved historical data as presented in the AWRMP.
- H. Respondent should collect data required for any proposed treatability studies or testing requirements for potential removal alternatives or innovative technologies to include pilot study design. Preliminary designs should be reviewed and approved by the lead agency as a potential alternative prior to data collection activities. Use of data from treatability studies or pilot tests performed for the North Maybe Mine will be described along with proposals for additional study.

#### **4.1.2 Engineering Evaluation/Cost Analysis (EE/CA)**

- A. Respondent will develop one or more EE/CA(s) that includes identification and screening of removal action alternatives, comparative analysis of applicable Site alternatives and proposed removal action selection. Selection of the action alternative(s) are the responsibility of the lead agency subsequent to public involvement. A suggested format for the EE/CA report is provided in Attachment A. Respondent can recommend alternatives applicable to the removal action,

however preferred alternative selection is the responsibility of the lead agency (see: Guidance on Conducting Non Time-Critical Removal Actions Under CERCLA EPA540-R-93-057.)

- B. \* Respondent will submit work plans for any proposed treatability studies or pilot testing programs unless the respondent demonstrates that treatability or pilot studies are not necessary to validate removal alternatives.
- C. Respondent will identify and propose plans for interim removal action activities in areas requiring immediate measures to protect human health or the environment, or to mitigate on-going releases as described in the AWRMP.
- D. Respondent will support alternatives with appropriate hydrologic studies and modeling (e.g. groundwater well inventory, water balance, fate and transport models, etc.)
- E. Respondent will coordinate with the lead agency to develop a Site-specific monitoring program to assess the effectiveness of selected removal action activities.
- F. Respondent and lead agency will coordinate development and screening of alternatives to be presented in the EE/CA. The respondent will prepare a memorandum describing the alternative, screening, and selection processes.

## **5.0 SCHEDULE OF DELIVERABLES**

The following schedules identify key point activities and deliverables to be prepared and submitted by the respondents. The schedule for the Site includes a series of technical work sessions to allow for early agency input and to streamline finalization of reports.

**Schedule North Maybe Mine Site**

<b>Deliverable*/ Activity</b>	<b>Deadline</b>
SI EE/CA Work Plan Work Session #1 – to provide Agencies with main concepts of Work Plan and discuss approach	Within 60 days after the effective date of the AOC
<b>Draft SI EE/CA Work Plan, including Field Sampling Plan, H &amp; S plan and QAPP.</b>	Within 90 days after the effective date of the AOC
SI EE/CA Work Plan Work Session #2 and 3 – to discuss Agency questions/comments on Draft SI EE/CA Work Plan prior to generation of consolidated Agency written comments and to present main concepts of the Sampling and Analysis Plan	Within 30 days after Draft SI EE/CA Work Plan is submitted to the agencies for review.
<b>Final SI EE/CA Work Plan, Field Sampling and Analysis Plan (including QAPP, H&amp;S)</b>	Within 30 days of receipt of consolidated Agency comments as established by fax date, or return receipt date from delivery service.
SI Work Session #1 - to provide Agencies with main findings of SI	Within 90 days of the completion of planned annual field work. Lead agency will be notified by Nu-West or their representative of the completion of field work activities 14 days prior to completion.
<b>Draft SI Report</b>	Within 120 days of completion of the planned annual field work or within 90 days of the receipt of final laboratory data of whichever is earlier. Duplicate data set is mailed simultaneously to the lead agency by the lab.
<b>Annual Supplemental SI reports ( prepared annually until SI Finalized.)</b>	Within 120 days of completion of the planned annual field work or within 90 days of the receipt of final laboratory data of which ever is earlier. Duplicate data set is mailed simultaneously to the lead agency by the lab.
SI Work Session #2 - to discuss Agency questions/comments on Draft SI Report prior to generation of consolidated Agency written comments	Within 30 days after Draft SI Report is submitted to the lead agency for review.
SI Work Session #3 - to discuss proposed report modifications in response to consolidated Agency comments on Draft SI Report and gain concurrence on finalization of report. Discuss data gaps and additional SI activities and schedules	Within 30 days after consolidated Agency comments are received by facsimile or certified overnight mail from the lead agency.
<b>Final SI Report</b>	Within 45 days of receipt of consolidated Agency comments as established by fax date, or return receipt date from delivery service

February 17, 2004

**Schedule North Maybe Mine Site**

<b>Deliverable*/ Activity</b>	<b>Deadline</b>
EE/CA Work Session #1 - to provide Agencies with main concepts of EECA and gain concurrence on the alternatives to be analyzed and the key aspects of the analysis.	Within 30 days of completion of the Final SI Report
<b>Draft EE/CA Report</b>	Within 120 days of completion of the Final SI Report
EE/CA Work Session #2 - to discuss Agency questions/comments on Draft EE/CA Report prior to generation of consolidated Agency written comments	Within 30 days after Draft EE/CA Report is submitted to the agencies for review. Receipt will be noted in that receipt date on the facsimile or mail.
EE/CA Work Session #3 - to discuss proposed report modifications in response to consolidated Agency comments on Draft EE/CA Report and gain concurrence on finalization of report	Within 30 days after consolidated Agency comments are received.
<b>Final EE/CA Report</b>	Within 75 days of receipt of consolidated Agency comments as established by fax date, or return receipt date from delivery service

\* Deliverables in bold. (Provide 4 hard copies (1 unbound) and 1 CD to lead agency and 1 copy to each support agency.)  
 Bolded deliverables are subject to the stipulated penalties provided in the AOC. In the event that delays are necessary, Nu-West or their designated representative will notify the lead agency OSC and ask for additional time.

At any point in the SI or EE/CA process, the Project Leader for Nu-West Industries or the lead agency's On-Scene Coordinator can identify a potential interim action. In such an instance, an alternative design would be developed by the PRP detailing the action sufficient for analysis in an interim EE/CA. Timelines for the implementation of interim actions would be provided in an interim action AOC.

**ATTACHMENT A**

**SUGGESTED REPORT FORMATS**

*(Report distribution should include a minimum of 4 hard copies including an unbound copy for the Lead Agency, one electronic copy on CD and 1 hard copy per Support Agency)*

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## SUGGESTED FORMAT FOR SI WORK PLAN

### EXECUTIVE SUMMARY

#### 1.0 INTRODUCTION

#### 2.0 SITE BACKGROUND

- 2.1 Description and Setting
- 2.2 Past Operations/Ownership/ Types and Volumes of Mine-related Waste Present
- 2.3 Topographic Features/Past Modifications
- 2.4 Ancillary Site Activities and Known/Recorded Releases
- 2.5 Existing Relevant Site-Specific Information/Data
- 2.6 Production Information

#### 3.0 DATA QUALITY OBJECTIVES/WORK PLAN RATIONALE

#### 4.0 SITE INVESTIGATION TASKS

- 4.1 Surface Water
- 4.2 Sediment
- 4.3 Groundwater
- 4.4 Soil
- 4.5 Vegetation
- 4.6 Ecological/Biological Studies
- 4.7 Water Balance/Loading Calculations

#### 5.0 PROJECT MANAGEMENT PLAN

- 5.1 Project Approach
- 5.2 Reporting Procedures/Coordination
- 5.3 Project Organization/Subcontractors
- 5.4 Projected Schedule

**FIGURES, TABLES, APPENDICES AS REQUIRED**

## **Suggested Format for EE/CA Work Plan**

- 1.0 Introduction
- 2.0 Site Characterization/Field Studies
- 3.0 Development of Removal Action Objectives
- 4.0 Risk Assessment Process Description
- 5.0 Analysis of Removal Action Alternatives
- 6.0 Schedule

***Figures, Tables, and Attachments as required***

## **Suggested Format for Sampling and Analysis Plan (SAP)**

- 1.0 Introduction
- 2.0 Site Background
- 3.0 Sampling Objectives
- 4.0 Sample Locations and Frequency
- 5.0 Sample Designation
- 6.0 Sampling Equipment and Procedures
- 7.0 Sample Handling and Analysis

**FIGURES, TABLES, AND ATTACHMENTS AS REQUIRED**

**SUGGESTED FORMAT FOR QUALITY ASSURANCE PROJECT PLAN (QAPP)**

Title Page

Table of Contents

- 1.0 Project Description
- 2.0 Project Organization and Responsibilities
- 3.0 QA Objectives for Measurement
- 4.0 Sampling Procedures
- 5.0 Sample Custody
- 6.0 Calibration Procedures
- 7.0 Analytical Procedures
- 8.0 Data Reduction, Validation and Reporting
- 9.0 Internal Quality Control
- 10.0 Performance and Systems Audits
- 11.0 Preventative Maintenance
- 12.0 Data Assessment Procedures
- 13.0 Corrective Actions

**SUGGESTED FORMAT FOR QUALITY ASSURANCE PROJECT PLAN (QAPP) (CONT.)**

14.0 Quality Assurance Reports

*FIGURES, TABLES, AND ATTACHMENTS AS REQUIRED*

## **SUGGESTED FORMAT FOR SITE INVESTIGATION (SI) REPORT**

### **EXECUTIVE SUMMARY**

- 1.0 INTRODUCTION
  - 1.1 Purpose of Report
  - 1.2 Site Background
    - 1.2.1 Site Description
    - 1.2.2 Site History
    - 1.2.3 Previous Investigations
  - 1.3 Report Organization
  
- 2.0 STUDY AREA INVESTIGATIONS/FIELD STUDIES
  - 2.1 Surface Features/Topography
  - 2.2 Contaminant Source Investigations
  - 2.3 Meteorological Investigations
  - 2.4 Surface Water/Sediment Investigations
  - 2.5 Geological Investigations
  - 2.6 Soil and Vadose Zone Investigations
  - 2.7 Groundwater Investigations
  - 2.8 Ecological Investigations
  
- 3.0 PHYSICAL CHARACTERISTICS OF THE STUDY AREA
  - 3.1 Surface Features
  - 3.2 Meteorology
  - 3.3 Surface Water Hydrology
  - 3.4 Geology
  - 3.5 Soils
  - 3.6 Hydrogeology
  - 3.7 Demography and Land Use
  - 3.8 Ecology
  
- 4.0 NATURE AND EXTENT OF CONTAMINATION/IMPACTS
  - 4.1 Contaminants of Potential Concern

**SUGGESTED FORMAT FOR SITE INVESTIGATION (SI) REPORT (CONT.)**

- 4.2 Sources
- 4.3 Soils and Vadose Zone
- 4.4 Groundwater
- 4.5 Surface Water and Sediments
- 4.6 Air
  
- 5.0 CONTAMINANT FATE AND TRANSPORT
  - 5.1 Potential Routes of Migration/Exposure Pathways
  - 5.2 Contaminant Persistence/Accumulation
  - 5.3 Contaminant Migration/Modeling
  
- 6.0 BASELINE RISK ASSESSMENT
  - 6.1 Human Health Evaluation
    - 6.1.1 Exposure Assessment
    - 6.1.2 Toxicity Assessment
    - 6.1.3 Risk Characterization
  - 6.2 Ecological/Environmental Evaluation
    - 6.2.1 Species/Community/Habitat Considerations
    - 6.2.2 Problem Formulation
    - 6.2.3 Exposure Pathways/Target Species
    - 6.2.4 Ecotoxicity/Stressor Response Assessment
    - 6.2.5 Risk Characterization
  
- 7.0 SUMMARY AND CONCLUSIONS
  - 7.1 Summary
    - 7.1.1 Nature and Extent of Contamination/Impacts
    - 7.1.2 Fate and Transport
    - 7.1.3 Risk Assessment and Action Level Comparisons
  - 7.2 Conclusions
    - 7.2.1 Data Limitations and Recommendations for Future Work
    - 7.2.2 Recommended Remedial Action Objectives

**SUGGESTED FORMAT FOR SITE INVESTIGATION (SI) REPORT (CONT.)**

Appendices: Analytical Data and QA/QC Results, Risk Assessment Methods

***FIGURES, TABLES, AND ATTACHMENTS AS REQUIRED***

## **SUGGESTED FORMAT FOR EE/CA REPORT**

### **EXECUTIVE SUMMARY**

- 1.0 INTRODUCTION
  
- 2.0 SITE CHARACTERIZATION
  - 2.1 Site Description and Background
  - 2.2 Previous Removal Actions
  - 2.3 Source, Nature and Extent of Contamination
  - 2.4 Analytical Data
  - 2.5 Risk Evaluation/Action Level Comparisons
  
- 3.0 IDENTIFICATION OF REMOVAL ACTION OBJECTIVES
  - 3.1 Determination of Removal Scope
  - 3.2 Determination of Removal Schedule
  - 3.3 Planned Remedial Activities
  
- 4.0 IDENTIFICATION AND ANALYSIS OF REMOVAL ACTION ALTERNATIVES
  - 4.1 Effectiveness
  - 4.2 Implementability
  - 4.3 Costs
  
- 5.0 COMPARATIVE ANALYSIS OF REMOVAL ACTION ALTERNATIVES

Appendix A: Hydrologic Studies/Modeling for Selected Alternative

Appendix B: Proposed Site Monitoring Plan

***FIGURES, TABLES, AND ATTACHMENTS AS REQUIRED***

**Note:** RECOMMENDED ALTERNATIVE TO BE DEVELOPED BY LEAD AGENCY

**MEMORANDUM OF UNDERSTANDING**  
**between**  
**USDA-FOREST SERVICE REGION 4,**  
**ENVIRONMENTAL PROTECTION AGENCY REGION 10,**  
**USDOl (BUREAU OF LAND MANAGEMENT,**  
**BUREAU OF INDIAN AFFAIRS, AND FISH AND WILDLIFE SERVICE),**  
**THE SHOSHONE-BANNOCK TRIBES, and**  
**STATE OF IDAHO DIVISION OF ENVIRONMENTAL QUALITY**  
**concerning**  
**CONTAMINATION FROM PHOSPHATE MINING OPERATIONS**  
**IN SOUTHEASTERN IDAHO**

**PARTIES:**

This Memorandum of Understanding (MOU) is entered into by and between the following governmental entities (Parties):

- The United States Department of Agriculture, Forest Service (Forest Service)
- The United States Environmental Protection Agency (EPA)
- The United States Department of Interior, Bureau of Land Management (BLM)
- The United States Department of Interior, Bureau of Indian Affairs (BIA)
- The United States Department of Interior, Fish and Wildlife Service (USFWS)
- The State of Idaho, Department of Health and Welfare, Division of Environmental Quality (IDEQ)
- The Shoshone-Bannock Tribes (Tribes)

The FS and BLM are hereafter collectively referred to as the "Federal Land Management Agencies." The FS, EPA, BLM, BIA and USFWS are hereafter collectively referred to as the "Federal Agencies."

For purposes of this MOU the Parties designate the individuals identified in Appendix A or their successors as general contacts for issues relating to this MOU

RECITALS

- A. Elevated concentrations of selenium and other hazardous substances, pollutants and contaminants have been identified in water, soil, and vegetation associated with current or former phosphate mining operations in southeastern Idaho.
- B. The approximate extent of currently known past and present phosphate mining operations is indicated on the map attached hereto as Exhibit 1 (the "Mining Area"), and includes areas located variously on federal land, tribal land, private land, state land, or a mixture of these types of ownership or jurisdictional areas. Individual phosphate mining operations located within the Mining Area are listed in Exhibit 1. The Parties reserve the right to amend Exhibit 1 as necessary upon mutual agreement in light of information received or developed pursuant to this MOU.
- C. A number of the Federal Agencies already have incurred and will incur costs in responding to the release and threat of release of hazardous substances in the Mining Area. It is anticipated that all the Parties eventually will incur such costs during the pendency of this MOU.
- D. The Federal Agencies have referred matters subject to this MOU to the U.S. Department of Justice ("DOJ") Environmental Enforcement Division for possible litigation and/or concurrences that may be required by Executive Order 12580, as well as for assistance in negotiations.
- E. Phosphate Mine Owners and Operators in the Mining Area ("Companies") may be liable for performing response actions and/or for response costs incurred and to be incurred by the "Parties" in responding to releases or threatened releases of hazardous substances within the Mining Area, and/or for natural resource damages.
- F. In July 1998, the Forest Service negotiated an Administrative Order on Consent ("AOC") with one of the Companies for completion of a Site Investigation ("SI") and an engineering evaluation/cost analysis (EE/CA) at South Maybe Canyon.

STATEMENT OF PURPOSE:

- G. The Parties acknowledge their overlapping authorities and interests in this matter and the complexity of mixed-ownership and jurisdictional issues in the Mining Area. The Parties intend in this MOU to provide a framework for the coordination of their actions and authorities to:

- 1) Ascertain the overall extent of the contamination present in and around historic and ongoing phosphate mining operations in the Mining Area;
  - 2) Define specific sites for focused investigation and response action;
  - 3) Establish overall priorities for the investigation and response action process in order to protect human health and the environment;
  - 4) Undertake investigations and response actions in a manner that will allow the Parties to recover response costs.
  - 5) Promote future mining operating practices that will safeguard the environment from future contamination; and
  - 6) Negotiate agreements or enter into contracts consistent with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, under which the Companies or contractors hired by one of the parties to this MOU will undertake appropriate investigation and response actions in connection with selenium and other contamination within the Mining Area ("Agreements").
- H. The Parties agree that they will work together to integrate procedures and substantive requirements for these various tasks under their respective asserted authorities, and to resolve any conflicts among them, in order to minimize duplication of efforts and assure effective and efficient response actions.
- I. The Parties also will work together in the exercise of their respective authorities in the Mining Area, to ensure compliance with applicable federal, state, local and tribal laws, including but not limited to the legal authorities listed for each Party in Appendix B hereto.
- J. The Parties similarly will work together in the exercise of their respective authorities in the Mining Area, and in accordance with the provisions of CERCLA and the NCP, to preserve their respective rights and interests concerning potential natural resource damage claims arising from injuries to natural resources in the Mining Area.
- K. The Parties also agree that it is important to communicate a single set of instructions to the Companies following consultation among themselves, and it

is important to develop and adhere to an agreed-upon communications plan in connection with their efforts under this MOU.

- L. This MOU is an agreement between the Federal Agencies, the State and the Tribes, and is not intended to control the relationship among the Federal Agencies.

AUTHORITIES:

- M. Each party asserts it has authority to enter into this Agreement and to respond to releases of hazardous substances within the Mining Area, as set forth in the Statement of Legal Authority attached hereto as Appendix B and incorporated as part of this MOU. By entering into this MOU, the Parties do not waive any of their respective authorities or concede authorities or jurisdiction asserted by other Parties. Nothing in this MOU shall be construed to restrict, enlarge, or otherwise determine the rights, interests, and jurisdiction of the United States, the State of Idaho, or the Tribes, or any of their respective departments or agencies.

AGREEMENTS:

A. Task Identification

1. The Parties agree to work together to establish criteria for defining the scope of an area-wide investigation, selecting specific sites for additional investigation or for response actions, and selecting a lead agency to oversee the site-specific response actions under Agreements with the Companies.
2. The Parties agree that an area-wide investigation should be conducted either by IDEQ or under an Agreement with one or more of the Companies.
3. The Parties agree that decisions concerning the particulars of how they should define the area-wide investigation, identify specific sites for additional investigation or response action, select a site-specific lead agency, identify support agencies, or otherwise implement their commitment to work together under this MOU will be made by a committee consisting of those persons identified in Appendix A, or their designee.

B. Identification of Lead and Support Agencies

4. For the area-wide investigation and for each specific site identified by the Parties for additional investigation or response action ("Site"), the Parties will

cooperatively identify a Lead and any Support Agencies having an interest at the Site. The designation of an agency as Lead Agency shall not exempt that agency from any access or regulatory requirements applicable to land under the jurisdiction, custody, or control of another Party.

5. IDEQ has been designated the Lead Agency with respect to the area-wide investigation.
6. The Parties agree that the existing AOC for South Maybe Canyon is not affected by or subject to this MOU, with the exception of Paragraph 11 hereof. With respect to any additional Agreements that may be entered into concerning South Maybe Canyon, the Forest Service will remain the Lead Agency. Other Parties may act as Support Agencies pursuant to the terms of this MOU for such subsequent Agreements.
7. The Lead Agency and Support Agencies identified for a Site will negotiate one or more Agreements with the Company or Companies having responsibility for the Site. It is contemplated that Lead and Support Agencies for a Site will mutually determine an approach regarding Agreements appropriate for a particular site. Examples of alternative approaches include:
  - a. A single Agreement with a Company, signed by the Lead and Support Agencies;
  - b. The Lead Agency and a Support Agency entering into separate Agreements with a Company, with the work undertaken based on a single mutually agreed statement of work (SOW); or
  - c. Only the Lead Agency entering into an Agreement with the Company.

In all cases agency coordination would continue, as provided in this MOU.

### C. Information Sharing and Coordination

8. The State shall supply an On-Scene Coordinator ("OSC") or Remedial Project Manager ("RPM"), who will have the duties described in the NCP, to oversee the area-wide investigation and the main point of contact for the Federal Agencies and the Companies.
9. The Lead Agency for each Site will supply an OSC/RPM to oversee the implementation of any investigations or response actions undertaken pursuant to

any Agreements between the Lead and Support Agencies and the Companies, and the main contact point for the Support Agencies and the Company or Companies involved.

10. For both the area-wide investigation and for each site-specific investigation and response action, each Support Agency will designate a Project Manager ("Project Manager").
11. The OSC/RPM will share information and coordinate with the Project Manager(s) during both the area-wide investigation and all site-specific investigations and response actions, as follows:
  - a. The OSC/RPM will provide the following to the Project Manager(s):
    - i. Copies of documents related to the investigation, analysis of alternatives, and response action design and implementation, including drafts of documents identified in Paragraphs 14 and 15 of this MOU.
    - ii. Reasonable prior notice of, and an opportunity to participate in, any meetings, conference calls, or other scheduled contacts with the Companies.
    - iii. Reasonable prior notice of activities to take place in connection with the area-wide investigation or at a specific Site.
  - b. The OSC/RPM and the Project Manager(s) will communicate regularly, by phone, correspondence, and meetings, to review the work status and to address any existing or anticipated technical issues.
  - c. The Project Manager(s) will advise the OSC/RPM regarding any issues and concerns of special interest to the Project Manager(s), in addition to those described in this MOU, so that the OSC/RPM can communicate or provide requested information to the Project Manager(s).
12. The Project Manager(s) will use best efforts to provide comments to the OSC/RPM within 21 days of the Project Manager's receipt of a deliverable from the Companies or a request for concurrence pursuant to Paragraphs 14 and 15 of this MOU. If a Project Manager determines that additional time is required to provide comments, the Project Manager will discuss the need for a reasonable amount of additional time (normally 15 days, or less) with the OSC/RPM, as soon as that need is identified.

13. The OSC/RPM will communicate the joint responses of the Parties to the Company(ies).

D. Concurrences

14. With respect to the area-wide investigation, the State, as the Lead Agency, will request concurrence from each Support Agency on a set of decision points to be established by the Signatory Committee or their designees, including but not limited to the following documents or their equivalents:

annual work plans  
overall investigation plan  
study identification  
sampling and analysis plans  
study completion reports  
changes to statement of work  
quality assurance plan  
health and safety plan  
risk assessment work plan  
draft risk assessment  
final risk assessment

15. With respect to site-specific work, the Lead Agency will request concurrence from each Support Agency on the following decision points:
- a. The Work Plan for the Site investigation and analysis of alternatives. Under CERCLA the analysis of alternatives would be contained within an EE/CA or a Remedial Investigation/Feasibility Study ("RI/FS");
  - b. The Health and Safety Plan;
  - c. The Community Relations/Public Involvement Plan;
  - d. Decisions concerning the need for additional data collection and/or any decision to cease data collection;
  - e. The final site investigation report;
  - f. The final human health and/or ecological risk assessments;
  - g. The final analysis of alternatives;

- h. Each proposed or final response action decision, such as a draft or final action memorandum or a Proposed Plan or Record of Decision ("ROD");
- i. Deliverables from a Company under an Agreement to implement any response action; and
- j. Any decisions pertaining to potential injury to natural resources.

E. Dispute Resolution

16. Resolution of and communication regarding legal issues will be coordinated among appropriate counsel for the Parties and, as appropriate, DOJ attorneys. The legal contacts for the Parties are as follows:

USDA - Attorney, United States Department of Agriculture, Office of General Counsel, James Alexander (or successor or designee)

DOI/BLM/BIA/FWS - Primary Contact: Attorney-Advisor Office of Solicitor, Branch of Federal Facilities Compliance John Seymour; , Supporting Contacts: Attorney-Advisor, Division of Mineral Resources Harvey Blank; Attorney-Advisor, Division of Indian Affairs Jean Rice; Attorney-Advisor, Division of Parks and Wildlife John Carlucci; or Attorney-Advisor from DOI Regional or Field Solicitor's Office (or their respective successors or designees)

*Trescilla Taylor per 7/19/01 e-mail*

EPA - Assistant Regional Counsel, EPA Region 10, Elizabeth McKenna (or successor or designee)

*USA Custom per 7/19/01 e-mail*

DOJ - Senior Attorney Region 10, Environmental Enforcement Section, Deborah M. Reyher, Ben Franklin Station, P.O. Box 7611, Washington, D.C. 20044, (202) 514-4113 (or successor or designee)

*Fred Phillips*

Idaho - Administrator, Waste Management & Remediation Division, Idaho Department of Environmental Quality. (or successor or designee)

Tribes - Special Counsel, Attorney's Office, Shoshone-Bannock Tribes, Jeanette Wolfley (or successor or designee)

17. With respect to both the area-wide investigation and the site-specific investigations and response actions, the Parties will use their best efforts to resolve technical disagreements informally among the OSC/RPM and the Project Manager(s).

18. If the OSC/RPM and the Project Manager(s) do not reach agreement through informal means, the Parties will use the following dispute resolution process:

- a. Project Manager(s) and the OSC/RPM for the agencies involved at the site will quickly elevate any unresolved dispute, first to the persons identified in Appendix A, and up through the following management personnel (or their designees):

Forest Service Region 4 Deputy Regional Forester

The BLM Idaho State Office Director.

EPA Region 10 Unit Manager of the Office of Environmental Cleanup, Ann Williamson

Program Administrator, Solid Waste Management Program, Idaho Department of Environmental Quality

USFWS - Regional Director

Chairman, Shoshone-Bannock Tribes' Land Use Commission

BIA - Deputy Commissioner

- b. If the Parties continue to disagree, the Lead Agency will prepare a proposed written decision which fully evaluates and addresses the expressed concerns of the Support Agencies, and the matter will be elevated to a committee consisting of the signatories to this MOU, or their successors or designees (the "Signatory Committee").
- c. If the Signatory Committee cannot reach agreement then the Supporting Agencies may: 1) accept the proposed decision of the Lead Agency; 2) seek mediation or further elevation through a process agreed upon by the disagreeing Agencies; or 3) rely on their respective rights and authorities under Paragraphs 4, 22-27 of this MOU. An unresolved disagreement at one site or on one issue does not require the withdrawal of a Party or termination of the entire MOU. If a disagreement is confined to one site or issue, coordination actions at other sites and on other issues will continue as specified in this MOU. Likewise, disagreement at one site or on one issue will not affect previous agreements reached at other sites or on other issues or prevent the enforcement of agreements at the subject site that became effective before the time of disagreement.

- d. To avoid impeding work, the time for resolving disputes among the Parties must be short. When informal dispute resolution between the OSC/RPM and Project Manager(s) does not rapidly resolve a dispute, the OSC/RPM and the Project Manager(s) should elevate the dispute through management within 10 days. The Parties should resolve disputes or issue a decision within 21 days of elevation. In exigent circumstances, any Party may immediately elevate a dispute directly to the Signatory Committee.
19. Work will continue during dispute resolution, except for work that is the subject of or dependent upon the outcome of the pending dispute and that may be delayed without posing an imminent and substantial endangerment to human health, welfare, or the environment.
  20. The dispute resolution process described in Section E of this MOU is separate from any dispute resolution process that may be described in an Agreement with a Company or Companies. If applicable, the Parties shall implement the dispute resolution process under such Agreements as follows:
    - a. The Lead Agency will propose an initial response to disputes raised by the Company, for concurrence by the Support Agencies.
    - b. If the Lead Agency and one or more of the Support Agencies cannot reach agreement as to how to respond to the dispute raised by the Company, a Support Agency may invoke the dispute resolution process under Section E of this MOU, unless the issue has already been disputed separately under this MOU. If the two dispute resolution processes are proceeding simultaneously, the dispute resolution process with the Company may not reach a final decision in a manner inconsistent with the MOU dispute resolution process.

#### F. CONFIDENTIALITY

21. The Parties recognize that to effectively and efficiently exercise their authorities concerning the Mining Area, their counsel, employees, and consultants may exchange documents and information subject to attorney-client privilege, attorney work product and other forms of privilege. The Parties, therefore, agree to protect these privileges, to the full extent provided by law. This provision shall remain in effect after this MOU terminates.

**G. RESERVATION OF RIGHTS**

22. The Federal Agencies reserve the right to exercise their rights and authorities under applicable law, including but not limited to, CERCLA, the NCP, and applicable Executive Orders, including Executive Order 12580, as amended and the Mineral Leasing Act, 30 U.S.C. sec. 181 et seq., including but not limited to, 30 U.S.C. § 211, and the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 et seq.
23. IDEQ reserves the right to exercise its rights and authorities under applicable law, including but not limited to, CERCLA, the NCP, the Idaho Environmental Protection and Health Act ("EPA"), Idaho Code §§ 39-101 to 39-130, and the Hazardous Waste Management Act of 1983 ("HWMA"), Idaho Code §§ 39-4401 to 39-4432.
24. The Tribes reserve the right to exercise their rights and authorities under applicable law, including but not limited to, CERCLA, their inherent sovereign powers, the Fort Bridger Treaty, the Constitution and Bylaws of 1936, and various provisions of the Land Use Policy Ordinance, the Law and Order Code of 1982, and the 1994 Fort Hall Water Rights Agreement.
25. This MOU is not intended to affect, and the Parties hereby expressly reserve, any and all claims or potential claims each may have arising from injuries to natural resources in the Mining Area.
26. No statements made in the course of negotiations among the Parties or in this MOU may be construed to represent an admission, determination, settlement, or adjudication of any legal or factual dispute relating to any Party's rights, privileges or interests.
27. Each Party expressly reserves the right to assert any and all defenses it may have to any claim that may be asserted by the other Parties or by any other person under federal, state, or tribal law.
28. Nothing in this MOU is intended either to create any rights in or grant any cause of action to any person not a party to this MOU or to release or waive any claim, cause of action, demand, or defense in law or equity that any of the Parties to this MOU may have against any person(s) or entity not a party to this MOU.
29. This MOU is not a fund obligating document. Any reimbursement or contribution of funds between the Federal Agencies that have signed this MOU will be handled in accordance with applicable law and procedures. Such

reimbursement or contribution shall be authorized in separate written agreements signed and approved by the appropriate agency officers or representatives pursuant to appropriate statutory authority. No provision of this MOU shall be interpreted or construed as a commitment or requirement that any of the Federal Agencies obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law, in any fiscal year for actions subject to this agreement.

H. GENERAL PROVISIONS

30. This MOU is effective upon the date signed by the last of the Parties.
31. This MOU terminates 10 years after its effective date. Prior to that, this MOU may be terminated, modified, or extended upon the written agreement of the Signatory Committee. A Party may terminate its participation in this MOU upon 14 days written notice to all Parties.

MEMORANDUM OF UNDERSTANDING  
concerning  
SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE

By:   
for Jack A. Blackwell  
Regional Forester  
U.S.D.A. Forest Service, Region 4

June 15, 2000  
DATE

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MEMORANDUM OF UNDERSTANDING  
concerning  
SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO

ENVIRONMENTAL PROTECTION AGENCY

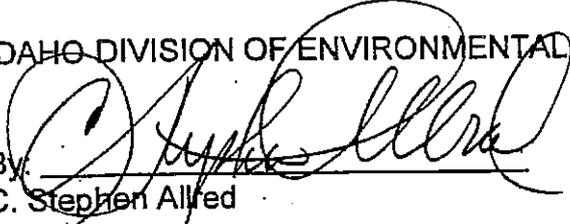
By: 

Mike Gearhard  
Hazardous Waste Division Director  
EPA Region 10

5 July 2000  
DATE

**MEMORANDUM OF UNDERSTANDING**  
**concerning**  
**SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO**

IDAHO DIVISION OF ENVIRONMENTAL QUALITY

By: 

C. Stephen Alfred

Director

Idaho Department of Environmental Quality

June 30, 2000  
DATE

MEMORANDUM OF UNDERSTANDING  
concerning  
SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO

UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF LAND MANAGEMENT

By: *Martha Hahn*  
for Martha Hahn  
Idaho State Director  
Bureau of Land Management

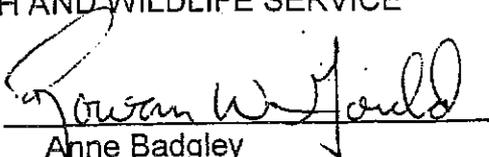
*June 11, 1989*  
DATE

MEMORANDUM OF UNDERSTANDING  
concerning  
SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO

UNITED STATES DEPARTMENT OF INTERIOR  
FISH AND WILDLIFE SERVICE

Acting

By:



Anne Badgley  
Regional Director  
USFWS Region 1

JUL 14 2000

DATE

MEMORANDUM OF UNDERSTANDING  
concerning  
SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO

UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS

By:

(need title)

Bureau of Indian Affairs

DATE

Memorandum of Understanding Concerning  
Contamination from Phosphate Mining  
Operations in Southeastern Idaho

July 17 6:24

**MEMORANDUM OF UNDERSTANDING**  
concerning  
**SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO**

UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS

By: *Marion Blackwell*  
Deputy Commissioner of Indian Affairs  
Bureau of Indian Affairs

*July 17, 2000*  
DATE

MEMORANDUM OF UNDERSTANDING  
concerning  
SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO

SHOSHONE-BANNOCK TRIBES

By: Claudio M. Broncho  
Claudio Broncho  
Vice Chairman, Fort Hall Business Council

6-17-00  
DATE

EXHIBIT 1

MEMORANDUM OF UNDERSTANDING  
concerning  
SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO

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**APPENDIX A**

**MEMORANDUM OF UNDERSTANDING  
concerning  
SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO**

For the purpose of this MOU The Parties designate the following persons, or their successors or designees, as general contacts for issues relating to this MOU:

USDA/Forest Service - Forest Supervisor of the Caribou-Targhee National Forest (currently Jerry Reese , 420 North Bridge Street, St. Anthony, ID 83445, (208) 624-3151)

DOI/BLM - District Manager, Upper Snake River District (currently Jim May 1405 Hollipark Driver, Idaho Falls, ID 83401, (208)524-7500.

BIA - Land Manager (currently Jeffery Loman [add address and phone])

USFWS - Supervisor, Eastern Idaho Field Office (currently Michael J. Donahoo, 4425 Burley Dr., Suite A. Chubbuck, ID 83202)

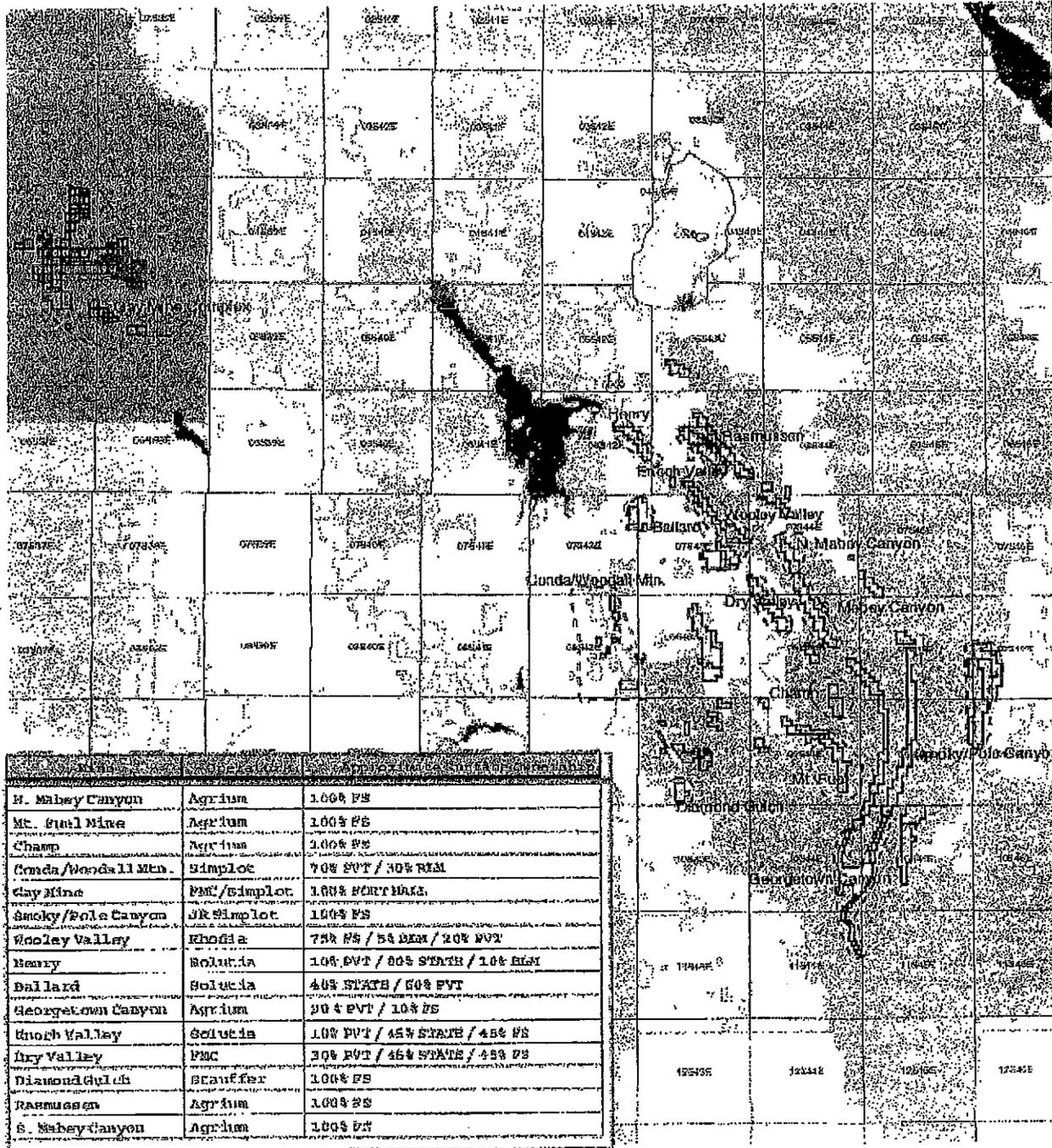
EPA - Nick Ceto, 1200 Sixth Avenue, ECL 116, Seattle, WA 98101, (206) 553-1816

DOJ - Senior Attorney, Region X, Environmental Enforcement Section (currently Deborah Reyher), Ben Franklin Station, P.O. Box 7611, Washington, D.C. 20044, (202) 514-4113)

IDEQ - Katherine Kelly, Administrator, Waste Management & Remediation Division, 1410 N. Hilton, Boise, ID 83706, 208-373-0445

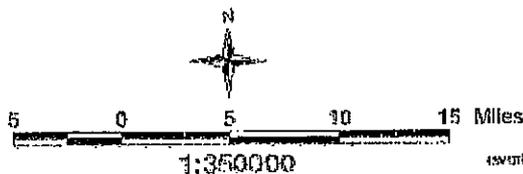
TRIBES - Jeanette Wolfley, Tribal Attorney, Shoshone-Bannock Tribes, P.O. Box 306, Fort Hall, ID 83203, (208) 232-1922

## Southeast Idaho Phosphate Mine Sites for Selenium Investigations



MOU Concerning Selenium Contamination in Southeast Idaho  
Exhibit 1

- Mine Leases
- Township Range Boundaries
- Land Ownership
- B.L.M.
- Fort Hall Reservation
- Caribou National Forest
- Private
- State
- Open Water



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## APPENDIX B

**MEMORANDUM OF UNDERSTANDING**  
concerning  
**SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO**

**STATEMENT OF AUTHORITY<sup>1</sup>**

1. Pursuant to CERCLA, the President is responsible for responding to releases of hazardous substances, or pollutants and contaminants, to protect the public health or welfare or the environment. The President's CERCLA response authority is generally delegated to EPA. 42 U.S.C. 9601 et seq.; Executive Order 12580, §§ (2)(g) & 4(d)(1)&(2).
2. Pursuant to Executive Order 12580, as amended by Executive Order 13016, the President delegated the authority to conduct various activities under CERCLA, including investigations and response activities (42 U.S.C. § 9604), cost recovery (42 U.S.C. § 9607), issuing such orders as may be necessary to protect public health or welfare or the environment (42 U.S.C. § 9606(a)), and entering agreements with a potentially responsible party ("PRP") for the PRP to perform investigations (42 U.S.C. § 9622(d)(3)) to several executive departments and agencies, including the Environmental Protection Agency ("EPA"), the United States Department of Agriculture ("USDA"), and the United States Department of the Interior ("DOI").
3. USDA is generally delegated the President's CERCLA authority where a release of a hazardous substance is on, or the sole source of the release is from, a facility under the jurisdiction, custody or control of an agency within the USDA.

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<sup>1</sup> Each of the Parties to the Memorandum of Understanding Concerning Selenium Contamination in Southeastern Idaho executed in June 2000 (MOU) has submitted a Statement of Authority as set forth herein pursuant to Paragraph M of the MOU. This Appendix to the MOU does not constitute an agreement among the parties nor have any legal significance separate and apart from its incorporation by reference in the MOU. No statements or assertions contained herein shall be construed to restrict, enlarge, or otherwise determine the rights, interests and jurisdiction of the United States, the State of Idaho, or the Shoshone-Bannock Tribes, or any of their respective departments, agencies or members. Nor shall any statements made herein be construed to represent an admission, determination, settlement or adjudication of any legal or factual dispute relating to any Party's rights, privileges, interests, authority or jurisdiction.

Executive Order 12580, §§ 2(e)(1) and 4(b)(1). The Forest Service administers National Forest System land on behalf of the public. With certain limitations, USDA delegated its CERCLA authority to the Forest Service where a release of a hazardous substance is on, or the sole source of the release is from, a facility under the jurisdiction, custody or control of the Forest Service. Executive Order 12580, §§ 2(e)(1) and 4(b)(1); 7 C.F.R. § 2.60(a)(39). Executive Order 13016 amends EO 12580 to authorize USDA's use of CERCLA Section 106 authority to address releases or threats of releases of hazardous substances affecting lands and natural resources under the Forest Service's trusteeship, jurisdiction, custody or control, subject to the concurrence of the Administrator of EPA. The CERCLA roles of USDA and the Forest Service are also recognized in various provisions of the NCP. 40 C.F.R. Part 300.

4. DOI is generally delegated the President's CERCLA authority where a release of a hazardous substance is on, or the sole source of the release is from, a facility under the jurisdiction, custody or control of an agency within DOI. Executive Order 12580, §§ 2(e)(1) and 4(b)(1). The CERCLA roles of DOI are also recognized in various provisions of the NCP. 40 C.F.R. Part 300. DOI has re-delegated its authorities under Executive Order 12580 to the Bureau Directors with respect to land, resources, and facilities within the jurisdiction, custody, or control of the Bureaus including BLM and BIA. Executive Order 13016 amends EO 12580 to authorize DOI's use of CERCLA Section 106 authority to address releases or threats of releases of hazardous substances affecting lands and natural resources under DOI's trusteeship, jurisdiction, custody or control, subject to the concurrence of the Administrator of EPA. The Secretary of the Interior also has authority to lease phosphate deposits of the United States and lands containing such deposits pursuant to the Mineral Leasing Act, 30 U.S.C. sec. 181 et seq. and to manage public lands pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 et seq. These authorities have been implemented by BLM, on behalf of the Secretary, through regulations contained in 43 C.F.R. Parts 3500 and 3590. DOI is also a trustee for natural resources, and USFWS is responsible for the protection and restoration of trust resources injured by uncontrolled releases of hazardous materials. USFWS also is responsible for conducting assessments to establish injury and the dollar equivalent of that injury for collection of damages from parties responsible for releasing hazardous materials. In addition to the authorities stated in Paragraphs 1 and 2, supra, USFWS participates in this MOU based on the following authorities: CERCLA Section 122(j), 42 U.S.C. § 9622(j); the Endangered Species Act of 1973, 16 U.S.C. §§1531-1544; the Migratory Bird Treaty Act of 1918, 16 U.S.C. §§ 703-712; the Bald Eagle Protection Act of 1940, 16 U.S.C. §§ 668-668d; the Fish and Wildlife Coordination Act, 16 U.S.C.

§§ 661-667e; and the National Wildlife Refuge System Administration Act of 1966, 16 U.S.C. §§ 668dd-668ee.

5. IDEQ is the Idaho State agency that generally has authority over the identification, investigation and clean-up of facilities where hazardous substances have come to be located in the State of Idaho. IDEQ exercises this authority pursuant to the Idaho Environmental Protection and Health Act ("EPHA"), Idaho Code §§ 39-101 to 39-130, and the Hazardous Waste Management Act of 1983 ("HWMA"); Idaho Code §§ 39-4401 to 39-4432. IDEQ is also the Idaho State agency with the authority to participate in the initiation and development of CERCLA response actions to be undertaken in the State of Idaho.
  
6. The Shoshone-Bannock Tribes ("Tribes") are federally recognized Indian tribes with a governing body known as the Fort Hall Business Council, which has authority to enter into this MOU on behalf of the Tribes. The Tribes, on July 3, 1868, concluded the Second Treaty of Fort Bridger with the United States, which was ratified by the United States Senate on February 24, 1869. 15 Stat. 673. Article 4 of the Fort Bridger Treaty reserved the Fort Hall Indian Reservation ("Reservation") as a "permanent home" for the signatory Tribes. Article 4 reserved off-Reservation hunting, fishing and gathering rights to the Tribes; these Treaty-guaranteed rights are exercised on public lands throughout the State of Idaho. The Tribes are obligated to protect both the individual and communal interests of the successors-in-interest of Indian signatories to the Treaty, and are responsible to protect the health, welfare and safety of Tribal members, and the environment of the Tribes. The Tribes have authority over the identification, investigation, and cleanup of hazardous substances found within Indian Country, including on the Reservation, and retain protectable Treaty interests in public lands and water located off-Reservation that may be affected by hazardous substances or pollutant and contaminants. The Tribes exercise their authority pursuant to, among other authorities, CERCLA, their inherent sovereign powers, the Fort Bridger Treaty, the Constitution and Bylaws of 1936, and various provisions of the Land Use Policy Ordinance, the Law and Order Code of 1982, and the 1994 Fort Hall Water-Rights Agreement. The Tribes anticipate finalizing a Hazardous Waste Management Act in 2000.

In the matter of: )

Area-Wide Investigation of )  
 Contamination from )  
 Phosphate Mining in )  
 Southeastern Idaho )

)  
 )  
 ) CONSENT ORDER/  
 ) ADMINISTRATIVE ORDER  
 ) ON CONSENT  
 )

## I. PARTIES

The Idaho Department of Environmental Quality ("IDEQ"), the United States Environmental Protection Agency ("EPA"), the United States Department of Agriculture ("USDA"), U.S. Forest Service ("USFS"), and the United States Department of Interior ("USDOl"), Bureau of Land Management ("BLM"), U.S. Fish and Wildlife Service ("USFWS"), Bureau of Indian Affairs ("BIA") and the Shoshone-Bannock Indian Tribes, (collectively referred to as the "Agencies") hereby enter into this Consent Order/Administrative Order on Consent ("CO/AOC") with J.R. Simplot Company, Nu-West Industries, Inc., Rhodia, Inc., FMC Corporation, P4 Production, L.L.C., (collectively referred to as the "Companies").

## II. PURPOSE AND SCOPE OF AGREEMENT

The purpose and scope of this CO/AOC is to identify procedures to be used to ensure the recovery of costs incurred by the IDEQ's performance or oversight and review, and EPA's<sup>1</sup>, USFWS's and the Tribes' oversight and review of an Area-Wide Investigation into contamination from phosphate mining operations in Southeast Idaho. The activities for which performance or oversight costs are to be recovered are more particularly set forth in the Scope of Work ("SOW") attached hereto as Exhibit "A," which is incorporated herein by reference.

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<sup>1</sup> Included as part of EPA's costs will be costs associated with the Agency for Toxic Substances and Disease Registry's (ATSDR's) activities under the CO/AOC.

III.  
LIMITATION OF SCOPE

Nothing herein shall be deemed to affect or govern any of the parties' rights, duties or obligations with respect to the identification, remediation, or clean up of any specific site. Each and every Party hereto reserves all claims, rights, causes of action and defenses with respect to any and all specific sites.

IV.  
AUTHORITIES

The Statements of Authority set forth below shall not be construed to restrict, enlarge, or otherwise determine the rights, interests and jurisdiction of the United States, the State of Idaho, or the Shoshone-Bannock Tribes, or any of their respective departments, agencies or members. Nor shall any statements made herein be construed to represent an admission, determination, settlement or adjudication of any legal or factual dispute relating to any Party's rights, privileges, interests, authority or jurisdiction. Each and every Party hereto reserves all claims, rights, causes of action and defenses with respect to any claim of jurisdiction expressed herein.

1. **FEDERAL AUTHORITY.** Pursuant to Executive Order 12580, as amended by Executive Order 13016, the President delegated the authority to conduct various activities and recover costs under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") to several executive departments and agencies, including EPA, USDA, and DOI. Such response activities include investigations and response activities (42 U.S.C. § 9604), cost recovery (42 U.S.C. § 9607), issuing such orders as may be necessary to protect public health or welfare or the environment (42 U.S.C. § 9606(a)), and entering into agreements with a potentially responsible Party ("PRP") for the PRP to perform investigations (42 U.S.C. § 9622(d)(3)).
2. **STATE AUTHORITY.** IDEQ is the Idaho state agency that generally has authority over the identification, investigation and clean-up of facilities where hazardous substances have come to be located in the State of Idaho. IDEQ exercises this authority pursuant to the Idaho Environmental Protection and Health Act ("EPA"), Idaho Code §§ 39-101 to 39-130, and the Hazardous Waste Management Act of 1983 ("HWMA"), Idaho Code §§ 39-4401 to 39-4432. IDEQ is the Idaho state agency with the authority to participate in the initiation and development of CERCLA response actions to be undertaken in the State of Idaho. Pursuant to Idaho Code § 39-108(b) and § 39-4414(2), IDEQ is entitled to recover from liable parties its reasonable costs associated with any violation of any permit, standard or regulation, including the costs of any non-routine investigation.

3. TRIBAL AUTHORITIES. The Shoshone-Bannock Tribes ("Tribes") are federally recognized Indian tribes with a governing body known as the Fort Hall Business Council, which has authority to enter into this CO/AOC on behalf of the Tribes. The Tribes have authority over the identification, investigation, and cleanup of hazardous substances found within Indian Country, including on the Reservation. The Tribes exercise their authority pursuant to, among other authorities, CERCLA, their inherent sovereign powers, the Fort Bridger Treaty, the Constitution and Bylaws of 1936, and various provisions of the Land Use Policy Ordinance, the Law and Order Code of 1982, and the 1994 Fort Hall Water Rights Agreement. Pursuant to CERCLA the Tribes can recover from liable parties all costs incurred for actions taken in response to the release or threatened release of hazardous substances that are not inconsistent with the National Contingency Plan ("NCP").

## V. FACTUAL BACKGROUND

Elevated concentrations of selenium and other hazardous substances, pollutants and contaminants have been identified in water, soil, vegetation and wildlife associated with current or former phosphate mining operations in southeastern Idaho. The IDEQ has determined that these elevated levels of selenium, and other hazardous substances, pollutants and contaminants are a violation of the standards, rules and regulations established pursuant to Idaho Code §§ 39-101 et seq. and 39-4401 et seq. The Companies dispute this assertion.

The approximate extent of currently known past and present phosphate mining operations in this region (the "Mining Area") is indicated on the map attached hereto for informational purposes as Exhibit B, and includes areas located variously on federal land, tribal land, private land, state land, or a mixture of these types of ownership or jurisdictional areas. Individual phosphate mining operations located within the Mining Area also are listed in Exhibit B.

The Agencies and the Companies have incurred and will continue to incur costs in responding to the release and threat of release of hazardous substances in the Mining Area. The Companies and other entities may be liable for some or all of those response costs.

Effective July 15, 2000, the Agencies entered into a Memorandum of Understanding ("MOU"). The MOU provides a framework for the coordination of the actions and authorities of the parties to the MOU. Under the terms of the MOU, IDEQ is designated the lead agency with respect to the Area-Wide Investigation; coordination with the other parties to the MOU is expected to occur pursuant to the terms of the MOU. The scope of the Area-Wide Investigation is set forth in the SOW.

VI.  
AGREEMENT TO REIMBURSE COSTS  
ASSOCIATED WITH AREA-WIDE INVESTIGATION

1. Without admitting any liability and expressly reserving all claims and defenses except as specifically waived herein, the parties hereto mutually agree as follows:
2. The parties hereby mutually waive any and all claims for past costs incurred by them in connection with the Area-Wide Investigation conducted by the Selenium Working Group of the Idaho Mining Association ("Working Group") regarding the release of selenium or other contaminants as a result of phosphate mining in the Mining Area. The term "past costs" as used herein shall mean such Working Group costs incurred prior to August 1, 2000. Past costs do not include costs incurred by any of the parties for work conducted outside the Working Group relating to the release of selenium or other contaminants as a result of phosphate mining in the Mining Area, or the costs described in Paragraph 3, below.
3. The Parties and the United States Department of Justice ("DOJ"), on behalf of all the Federal Agencies and the Tribes, hereby reserve all claims for response costs, both past and future, associated with site-specific investigations or incurred in connection with the Area-Wide Investigation and not reimbursed or waived pursuant to the terms of this CO/AOC. Site-specific past costs include, but are not limited to, costs attributable to the South Maybe Canyon Mine Site, which is the subject of a June 8, 1998 Administrative Order on Consent between the Forest Service and Nu-West Industries, Inc. and Nu-West Mining, Inc. and costs incurred in connection with preliminary assessments and PRP searches for specific phosphate mining sites.
4. The Mining Companies assert that claims for cost recovery by certain Federal Agencies may be barred or diminished pursuant to Section 113 and/or Section 120 of CERCLA (42 USC § 9613, 9620). The Federal Agencies and Tribes dispute this assertion. The Mining Companies expressly reserve any and all claims and/or defenses based on these provisions.
5. IDEQ Cost Recovery Procedures: Subject to the funding commitments set forth below, the Companies hereby agree to reimburse IDEQ for its reasonable costs incurred by IDEQ in connection with performance, oversight and review of the items set forth and described in the SOW as provided herein.
  - a. Funding Commitment: The Companies hereby agree to commit the sum of up to five million dollars (\$5,000,000.00) over a ten (10) year period commencing on the date following signature of this agreement for the purpose of reimbursing IDEQ for all of its reasonable costs incurred in the performance of the work identified in the SOW. Said funds shall be made available to IDEQ as follows:

1. Year One: Up to one million dollars (\$1,000,000.00)
2. Year Two: Up to one million dollars (\$1,000,000.00)
3. Years Three through Ten: Up to Three Hundred Seventy Five Thousand dollars (\$375,000.00) per year.

b. If any of the amounts of funding set forth in paragraph 5.a. of this section are not utilized in a given fiscal year, such surplus funding shall be made available in subsequent fiscal years within the ten (10) year project life set forth above.

c. The funding commitments set forth above shall not be deemed to constitute a waiver by the State of Idaho, or IDEQ of any claim or right or cause of action to recover amounts in addition to the amounts set forth above and IDEQ hereby expressly reserves the right to recover amounts which exceed the funding commitments set forth above in accordance with the procedure set forth in paragraph 5.d. of this section.

d. If during any fiscal year the amount sought by IDEQ under this CO exceeds the annual or decennial funding commitments of the Companies expressed herein, the IDEQ shall submit a supplemental request for payment to the Companies setting forth the amounts sought in excess of the funding commitments set forth above and a detailed explanation of the reasons for such exceedence. Within thirty (30) days of receipt of the Supplemental Request the Companies must either agree to payment of the Supplemental Request for payment, or deny the supplemental request for payment. Any denial, must set forth a detailed explanation upon which the Companies predicate denial. Any denial of a request for supplemental payment is subject to the informal dispute resolution provisions contained herein but not formal dispute resolution. Any such supplemental request for payment shall not obligate the Companies to make payment. IDEQ reserves the right to institute a civil action for the recovery of these costs pursuant to Idaho Code § 39-108(b) and § 39-4414(2).

e. Budget, Billing and Payment Procedures: Not later than June 30 of each year, IDEQ shall submit to the Companies estimated annual budgets (Annual Budget Estimate) for the costs and expenditures associated with performance, oversight and review of the work outlined in the SOW expected to be incurred by IDEQ in the following fiscal year. The Companies shall have 30 days after receipt of the Annual Budget Estimate within which to submit comments or object to items contained in the Annual Budget Estimate.

f. The Annual Budget Estimate shall not be binding upon any Party. The Annual Budget Estimate shall serve solely as an estimate of reasonably foreseeable costs and expenditures. IDEQ shall not be limited by any amount set forth in the Annual Budget Estimate, and shall not be required to expend the specific amounts set forth therein.

g. Within thirty (30) days after the end of each fiscal quarter, IDEQ shall provide the Companies with detailed statements of expenditures made during the fiscal quarter. Such expenditures shall be in accordance with the authorities of IDEQ as set forth in paragraph IV herein. Subject to the limitations on amounts set forth above the Companies shall remit payment for these expenditures to IDEQ within thirty (30) days of receipt of IDEQ's statement of expenditures.

h. If the Companies dispute any amounts set forth in the statement of expenditures, the Companies shall remit payment for all sums not in dispute. Thereafter, any disputes concerning an amount owed by the Companies shall be resolved through the dispute resolution process set forth in Section XII of this CO/AOC. If resolution of a dispute results in any portion of the disputed sum being awarded to IDEQ, the Companies shall within fifteen (15) days after receipt of the final decision: (i) remit the amount awarded plus interest accruing at the statutory rate for interest on judgments from the date originally due; or (ii) proceed with other legal remedies in accordance with Section XII herein.

6. Federal Costs: The Companies hereby agree to reimburse the EPA and USFWS for their "Oversight Costs" as defined herein.

a. Definition of Oversight Costs. "Oversight Costs" shall mean all direct and indirect costs incurred by the EPA, USFWS in connection with their oversight and review of the Work performed by or on behalf of IDEQ under this CO/AOC after its effective date as set forth and described in the SOW, including, but not limited to, time and travel costs of EPA and USFWS personnel associated with oversight of the work performed under the SOW; contractor costs; federal inter-agency agreement costs; compliance monitoring, including the collection and analysis of split samples; site visits; discussions regarding disputes that may arise under this CO/AOC; review and approval or disapproval of reports; and any other costs directly incurred in overseeing this CO/AOC.

b. Federal Payment Procedure. EPA and USFWS each will submit to the Companies annual bills and supporting cost summaries for Oversight Costs incurred during the billing period. The first bills for Oversight Costs shall be issued no sooner than ninety (90) days after the effective date of this CO/AOC. The Companies shall remit payment for these expenditures to the billing entity (EPA or USFWS) within thirty (30) days of receipt of the BILL. Payments to EPA shall be made by certified or cashier's check made payable to EPA Hazardous Substance Superfund. Each check shall reference the name and address of the Party making payment, the Area-Wide Investigation, the EPA Region 10 number (106R), and shall be sent to:

EPA Superfund  
Region 10  
1200 Sixth Avenue, DMP-146  
Seattle, WA 98101.

The Companies shall simultaneously transmit a copy of the check to:

Financial Management Officer  
Region 10  
1200 Sixth Avenue, OMP-146  
Seattle, WA 98101

Payments to USFWS shall be made by certified or cashier's check made payable to the United States Fish and Wildlife Service and mailed to:

U.S. Fish & Wildlife Service  
ATTN: Debra Freeman  
911 N.E. 11th Avenue  
Portland, OR 97232-4181

If the Companies dispute any amounts set forth in a statement of expenditures, the Companies shall remit payment for all sums not in dispute. Thereafter, any disputes concerning an amount owed by the Companies shall be resolved through the dispute resolution process set forth in Section XII of this CO/AOC. If resolution of a dispute results in any portion of the disputed sum being awarded to EPA, USFWS, the Companies shall within fifteen (15) days after receipt of the final decision: (i) remit the amount awarded plus interest accruing at the statutory rate for interest on judgments from the date originally due; or (ii) proceed with other legal remedies in accordance with Section XII herein.

c. Interest. In the event that any payment required by paragraph 6(a) is not made when due, interest shall accrue on the unpaid balance. Interest shall continue to accrue on the unpaid balance through the date of payment. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 USC 9507, compounded annually on October 1 of each year, in accordance with 42 USC § 9607(a). Payments of interest shall be in addition to such other remedies or sanctions available to the Federal Agencies by virtue of the Companies' failure to make timely payments under this section. Payments required by this paragraph shall be made in the same manner described in paragraph 6(b) above.

7. Tribal Costs: The Companies hereby agree to commit to the sum of up to Sixty-Five Thousand Dollars (\$65,000) per year for a three (3) year period commencing on the date

following complete execution of this agreement for the purpose of providing support for a full time position for a Selenium Project Manager, including fringe benefits and said Manager's reasonable costs and expenditures, to perform the oversight, investigation and review of work in the area-wide scope of work and site specific work. If the annual funding amount is not utilized in a given fiscal year, such surplus funding shall be made available in subsequent fiscal years during the three (3) year period referenced above. Unless terminated by the Companies, this agreement shall automatically renew upon expiration of the three year term for an additional three (3) year term under the same terms and conditions set forth herein.

a. Budget, Billing and Payment Procedures: Not later than July 30th of each year, the Tribes shall submit to the Companies an estimated annual budget for the salary and costs associated with the Selenium Project Manager which shall not exceed Sixty-Five Thousand Dollars (\$65,000). The annual estimates shall not be binding on any Party. The annual estimates for costs and expenditures shall serve solely as an estimate of reasonably foreseeable costs and expenditures. The Tribes shall not be limited by the estimates of costs and expenditures, and shall not be required to expend the specific amounts set forth in the annual budget provided to the Companies. The Companies shall have 30 days after receipt of the Tribes' estimated annual budget within which to submit comments or object to items contained in the annual budget. If there are objections by the Companies, the parties shall proceed in accordance with paragraph 7.b. herein. If there are no objections by the Companies, the Companies shall remit payment of the annual salary, and within thirty (30) days after the end of each fiscal quarter, the Tribes shall provide the Companies with statements of expenditures made during the fiscal quarter. Such expenditures shall be in accordance with the authorities of the Tribes as set forth in Section IV herein. Subject to the limitations on amounts set forth above, the Companies shall remit payment for these expenditures to the Tribes within thirty (30) days of receipt of the Tribes' statement of expenditures.

b. Dispute of any amount: If the Companies dispute any amounts set forth in the statements of expenditures, the Companies shall remit payment for all sums not in dispute. Any disputes concerning an amount owed by the Companies to the Tribes shall be resolved through the dispute resolution process set forth in Section XII of this CO/AOC. If resolution of a dispute results in any portion of the disputed sum being awarded to the Tribes, the Companies shall within fifteen (15) days after receipt of the final decision: (i) remit the amount awarded plus interest accruing at the statutory rate for interest on judgments from the date originally due; or (ii) proceed with other legal remedies in accordance with Section XII herein.

c. Interest: In the event that any payment required in paragraph 7.b. is not made when due, interest shall accrue on the unpaid balance. Interest shall continue to accrue on the unpaid balance through the date of payment. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. §

9607(a). Payments of interest shall be in addition to such other remedies or sanctions available to the Tribes by virtue of the Companies' failure to make timely payments under this section.

## VII.

### DELEGATION AND ASSIGNMENT OF RESPONSIBILITY

It is the purpose and intent of IDEQ as lead agency to utilize cost efficient and expedient measures in performance of this CO/AOC and the attached SOW. IDEQ, or its designated contractor, shall have the primary responsibility for performing the tasks and subtasks described in the attached SOW. The IDEQ shall determine, in consultation with the Federal Agencies and the Tribes, appropriate resources for the performance of the tasks and subtasks described in the attached SOW. This may include assignment of tasks to the Mining Companies and their selected contractors, where appropriate, based upon consideration of efficiency and available resources. The Federal Agencies and the Tribes shall participate in decisions regarding such assignments and oversee such work as provided in the Memorandum of Understanding described in Section V above. All work assigned to the Mining Companies will be performed pursuant to enforceable agreements that will be separately executed and made subject to this CO/AOC. Nothing in this section or in the Scope of Work shall, in any way, limit the authority or the ability of the IDEQ to collect samples or take any actions necessary for completion of the Area-Wide Investigation, the provisions of the CO/AOC or the Scope of Work, which the IDEQ, in its discretion, determines are necessary and appropriate.

## VIII.

### CONSISTENCY WITH NATIONAL CONTINGENCY PLAN

All work implemented or required under this CO/AOC and the SOW shall be conducted in a manner which is not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, including without limitation 40 C.F.R. Subpart H. (40 C.F.R. § 300.415, and § 300.700).

## IX.

### COMPLIANCE WITH OTHER LAWS

Except as set forth herein, this CO/AOC shall not relieve the Companies from their obligations to comply with any of the applicable provisions of and the Parties hereto specifically reserve all other rights under the EPHA; the HWMA; the Idaho Water Quality Standards and Wastewater Treatment Requirements, IDAPA 16.01.02.001 to 16.01.02.999; the Rules and Standards for Hazardous Waste, IDAPA 16.01.05.001 to 16.01.05.999; the Ground Water Quality Rule, IDAPA 16.01.11.001-16.01.11.999, CERCLA, 42 U.S.C. 9601- 9675 and any other applicable local, state, tribal or federal law.

X.  
COORDINATION WITH SITE-SPECIFIC REMEDIAL ACTIONS

The parties contemplate that various site-specific investigations, risk assessments and possible remedial actions will or may be performed in the future on all or some of the individual mining operations listed in Exhibit B pursuant to the terms of negotiated Consent Orders/Administrative Orders on Consent. Because this Area-Wide investigation includes a general, region-wide risk assessment and planning for general remedial action objectives and measures that are intended to be used to facilitate, expedite and provide consistency for future site-specific work, the parties generally contemplate and intend that this Area-Wide Investigation will be closely coordinated and not performed in a duplicative or inconsistent manner with any site-specific work. By stating this general goal, however, IDEQ, the Federal Agencies and the Tribes do not waive or limit any of their authorities with respect to determining the scope of or schedule for either the Area-Wide Investigation or any site-specific work.

XI.  
GENERAL PROVISIONS

1. Conflict Between Consent Order and Exhibits. To the extent of any conflict between the meaning of the terms and provisions in this CO/AOC and the Exhibits, the meaning in this CO/AOC shall control.
2. Modifications. This CO/AOC may be modified by the Parties' mutual agreement. Agreed modifications to the CO/AOC must be in writing signed by an authorized representative of each party.

IDEQ, the Federal Agencies and the Tribes reserve the right to modify the SOW pursuant to the Memorandum of Understanding among them, but the Mining Companies will not be obligated under this CO/AOC to pay for any increase in costs incurred by IDEQ, the Federal Agencies or the Tribes as a result of such modification, unless they agree to pay such increased costs in writing. IDEQ, the Federal Agencies and the Tribes nonetheless reserve the right to seek recovery of such increased costs from the Companies.

3. Notice. All communications required by this CO/AOC shall be addressed to:

IDEQ – Orville Greene, Administrator, Waste Management & Remediation  
Division, Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, ID  
83706, 208-373-0445

EPA - Nick Ceto, U.S. Environmental Protection Agency, 1200 Sixth Avenue,  
ECL 116, Seattle, WA 98101, (206) 553-1816

USDA/Forest Service - Forest Supervisor of the Caribou-Targhee National Forest (currently Jerry Reese, 1405 Hollipark Dr., Idaho Falls, ID, 83401, (208) 557-5760)

BIA - Land Manager (currently Allen Sedik, CERCLA Coordinator, U.S. Department of the Interior, Bureau of Indian Affairs, 1849 C St., NW, MS 4513, Washington, DC, 20240, (202) 208-5474)

USFWS – Contaminants Specialist, Snake River Basin Office (currently Susan Burch, 1387 S. Vinnell Way, Room 368, Boise, ID 83709, (208) 378-5243)

TRIBES - Jeanette Wolfley, Tribal Attorney, Shoshone-Bannock Tribes, P.O. Box 306, Fort Hall, ID 83203, (208) 232-1922

DOI/BLM - District Manager, Upper Snake River District (currently Jim May 1405 Hollipark Drive, Idaho Falls, ID 83401, (208) 524-7500.

J. R. Simplot Company – Bruce Winegar, Frontier Bldg., 1130 W. Hwy. 30, Pocatello, ID 83204, (208) 235-5675.

Nu-West Industries, Inc. – Scott Sprague, Agrium U.S., Inc., 3010 Conda Rd., Soda Springs, ID 83276, (208) 543-4387.

Rhodia, Inc. – Dan Bersanti, Rhodia, Inc., P.O. Box 3146, Butte, MT, 59702, (406) 782-1215.

FMC Corporation – Rob Hartman, P.O. Box 4111, Pocatello, ID 83202, (208) 236-8658

P4 Production, L.L.C. – Robert Geddes, P.O. Box 816, Soda Springs Plant Highway 34 N., Soda Springs, ID 83276, (208) 547-4300.

4. Effect on Successors and Assigns. This CO/AOC shall bind the parties and their respective successors, agents, and assigns until such time as the terms of this CO/AOC are fully met.

5. Reservation of Natural Resource Damage Claims. Nothing herein shall be deemed to waive or compromise any claims, known or unknown, existing or potential for damages to natural resources whether in existence at the time of this CO/AOC or arising in the future.

6. State Tolling Agreement. The State of Idaho and the Companies expressly stipulate and agree that any statute of limitations applicable to any claims under CERCLA, EPHA, HWMA or any

other applicable law, for natural resource damages or other damages to the environment, is hereby tolled as of the effective date hereof, until such time as this CO/AOC is terminated. IDEQ and Companies further stipulate and agree that this tolling provision is not intended to restrict IDEQ and Companies from enforcing their rights under this CO/AOC, or to limit the time within which IDEQ and Companies may enforce such rights as provided in Idaho Code § 29-110. IDEQ and Companies further stipulate and agree that the IDEQ's right to pursue a claim for natural resource damages and the Companies' right to raise any defense to a natural resource damage claim are not rights created by or enforceable under this CO/AOC and, therefore, the tolling provision set forth herein is not prohibited by Idaho Code § 29-110.

7. Federal Tolling Agreement. The Companies and the Federal Agencies shall enter into a separate tolling agreement.

8. Tribal Tolling Agreement. The Companies and the Tribes shall enter into a separate tolling agreement.

9. Third Person's Rights Unaffected. Except as expressly provided herein, nothing in this CO/AOC shall be construed to create any rights in, or grant any cause of action to, the Parties or any person not a Party to this CO/AOC.

10. Effective Date. The effective date of this CO/AOC shall be the date of signature by the last of the Parties.

11. Authority. Each undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions of this CO/AOC, and to execute and legally bind such Party to this document.

## XII. DISPUTE RESOLUTION

Informal Resolution: It is understood that disputes may arise between the Companies and either a single agency participant or multiple agency participants regarding cost recovery items governed by this CO/AOC. The Companies and the Agency (or Agencies) shall attempt to resolve expeditiously and informally disputes that arise under this CO/AOC. An agreement to informally resolve a dispute reached by the Parties pursuant to this section shall be memorialized in writing, signed by both Parties, and shall, upon the signature of both parties, be incorporated into and become an enforceable element of this CO/AOC.

Formal Resolution: If, after consultation, the Companies and the Agency(ies) still cannot agree on disputed matters, the Companies and the Agency(ies) may initiate a Dispute Resolution Process by written request directed to each Party's representative identified in Section XI, Paragraph 3 above. This dispute resolution process shall apply only to disputes involving

accounting errors in the calculation of amounts due, claims that costs billed are not within the categories of costs covered by this CO/AOC and/or alleged inconsistencies of response actions with the NCP.

The request for dispute resolution shall set forth the position of the requesting Party regarding the disputed matter, and include supporting data. The affected agency shall designate a Dispute Reviewer who shall issue a decision regarding the disputed matter. The decision of the Dispute Reviewer shall be incorporated into and become an enforceable element of this CO/AOC upon the parties' receipt of the decision regarding the dispute.

Nothing in this Order precludes the parties from agreeing to use other forms of alternative dispute resolution.

**Review of IDEQ Disputes:** With respect to disputes involving IDEQ's costs, either Party may seek review of the Dispute Reviewer's decision in accordance with applicable law including initiation of a contested case pursuant to the Hazardous Waste Management Act and Rules for Contested Cases before the Idaho Department of Environmental Quality, IDAPA 58.05.03, et seq.

**Review of Federal and Tribal Disputes:** With respect to disputes involving costs billed by any Federal Agency or the Tribes, the Dispute Reviewer's decision shall be final, but shall not constitute final agency action for purposes of initiating judicial review unless and until such Federal Agency or Tribes initiate a judicial action to enforce this CO/AOC.

**Effect on other Matters:** If the Dispute Resolution Process is invoked with respect to a particular matter, all other matters not directly affected thereby shall proceed according to the requirements of this CO/AOC.

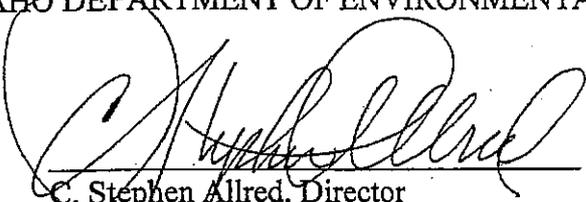
### XIII. TERMINATION

This CO/AOC shall be terminated in writing by the Parties hereto upon completion of the items set forth in the attached SOW and final payment of all oversight costs and obligations under Section VI of this CO/AOC.

### XIV. SIGNATURE IN COUNTERPARTS

This CO/AOC may be signed in counterparts. Upon signature the original signature pages will be forwarded to the Department of Environmental Quality which shall maintain an original copy of the CO/AOC and all original signatures thereto. Copies shall be provided to all parties.

IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

By:   
C. Stephen Allred, Director  
Idaho Department of Environmental Quality

7/20/01  
Date

ENVIRONMENTAL PROTECTION AGENCY

By: Chuck Findley  
Chuck Findley  
Acting Regional Administrator  
EPA Region 10

5-03-01  
Date

UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF LAND MANAGEMENT

By: \_\_\_\_\_  
Martha Hahn  
Idaho State Director  
Bureau of Land Management

\_\_\_\_\_  
Date

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE

By: \_\_\_\_\_  
Jack A. Blackwell  
Regional Forester  
U.S.D.A. Forest Service, Region 4

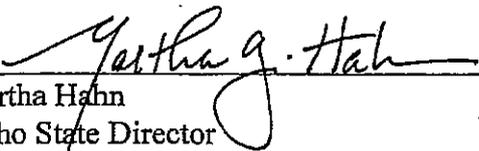
\_\_\_\_\_  
Date

ENVIRONMENTAL PROTECTION AGENCY

By: \_\_\_\_\_  
Chuck Findley  
Acting Regional Administrator  
EPA Region 10

\_\_\_\_\_  
Date

UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF LAND MANAGEMENT

By:   
Martha Hahn  
Idaho State Director  
Bureau of Land Management

April 27, 2001  
Date

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE

By: \_\_\_\_\_  
Jack A. Blackwell  
Regional Forester  
U.S.D.A. Forest Service, Region 4

\_\_\_\_\_  
Date

ENVIRONMENTAL PROTECTION AGENCY

By: \_\_\_\_\_  
Chuck Findley  
Acting Regional Administrator  
EPA Region 10

\_\_\_\_\_  
Date

UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF LAND MANAGEMENT

By: \_\_\_\_\_  
Martha Hahn  
Idaho State Director  
Bureau of Land Management

\_\_\_\_\_  
Date

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE

By: Jack A. Blackwell  
Jack A. Blackwell  
Regional Forester  
U.S.D.A. Forest Service, Region 4

Apr 25, 2001  
Date

Chuck Findley  
Acting Regional Administrator  
EPA Region 10

\_\_\_\_\_  
Date

UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF LAND MANAGEMENT

By:

\_\_\_\_\_  
Martha Hahn  
Idaho State Director  
Bureau of Land Management

\_\_\_\_\_  
Date

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE

By:

\_\_\_\_\_  
Jack A. Blackwell  
Regional Forester  
U.S.D.A. Forest Service, Region 4

\_\_\_\_\_  
Date

SHOSHONE-BANNOCK TRIBES

By:

  
\_\_\_\_\_  
Lionel Boyer  
Chairman  
Fort Hall Business Council

\_\_\_\_\_  
Date

SHOSHONE-BANNOCK TRIBES

By: \_\_\_\_\_  
Lionel Boyer  
Chairman  
Fort Hall Business Council

\_\_\_\_\_  
Date

UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS

By: Sharon Blackwell  
Name: Sharon Blackwell  
Title: Deputy Commissioner of Indian Affairs  
Bureau of Indian Affairs

MAY 4 2001

\_\_\_\_\_  
Date

UNITED STATES DEPARTMENT OF INTERIOR  
FISH AND WILDLIFE SERVICE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Fish and Wildlife Service

\_\_\_\_\_  
Date

SHOSHONE-BANNOCK TRIBES

By: \_\_\_\_\_  
Lionel Boyer  
Chairman  
Fort Hall Business Council  
\_\_\_\_\_  
Date

UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Bureau of Indian Affairs  
\_\_\_\_\_  
Date

UNITED STATES DEPARTMENT OF INTERIOR  
FISH AND WILDLIFE SERVICE

By: Anne Badgley  
Name: Anne Badgley  
Title: Regional Director  
Fish and Wildlife Service  
5/22/01  
Date

J. R. SIMPLOT COMPANY

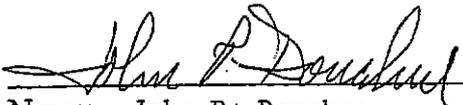
By:   
Ronald N. Graves  
Vice President and Secretary

May 14, 2001  
Date

NU-WEST INDUSTRIES, INC.

By: Jon P. Goode  
Name: JON W. GOODE  
Title: VICE PRESIDENT  
MAY 25, 2001  
Date

RHODIA, INC.

By:   
Name: John P. Donahue  
Title: Senior Vice President, Secretary  
and General Counsel  
May 11, 2001  
Date

FMC CORPORATION

By: Robert J. Fields  
Robert J. Fields  
Division Manager

MAY 11, 2001  
Date

P4 PRODUCTION, L.L.C.

By: Bruce Pallante  
Bruce Pallante  
Plant Manager and Assistant Secretary

May 16, 2001  
Date

**AREA WIDE INVESTIGATION SCOPE OF WORK  
SOUTHEAST IDAHO PHOSPHATE MINING RESOURCE AREA  
PREPARED BY IDAHO DEQ**

## **Introduction**

The Area Wide Investigation is a limited interagency-driven investigation designed to assess ecological and human health impacts from past mining operations, and to support agency-lead remedial activities in the Southeast Idaho Phosphate Mining Resource Area (Resource Area; See Exhibit 1). This investigation is separate and distinct, in that official Interagency technical conclusions will be developed, from the Resource Area investigations conducted by the Selenium Subcommittee of the Idaho Mining Association (IMA) or the Interagency/Phosphate Industry Selenium Working Group; or from any future site-specific remedial investigations.

As set forth in the Memorandum of Understanding (MOU) between federal, state, and tribal governments, signed on or about July 13, 2000, the State of Idaho Department of Environmental Quality (DEQ) is the lead agency for the Area Wide Investigation. The DEQ, with the assistance of a DEQ-retained third-party contractor, is responsible for coordinating the Area Wide Investigation with the other MOU agencies' active participation (including requesting concurrence from each Support Agency on each decision point and on each document developed during the course of the area-wide investigation) in accordance with the terms of the MOU. The primary objectives of the Area Wide Investigation are to:

- 1) Establish area wide remedial action objectives (RAOs), remediation goals (RGs), and risk-based cleanup levels for selenium and other contaminants of concern that will be protective of human health and the environment,
- 2) Develop a monitoring plan that will assess the effectiveness of future remedial activities within the Resource Area,
- 3) Develop Best Available Technologies and Remediation Techniques for use, as appropriate, at sites in the Resource Area, and
- 4) Provide information to support future agency-approved site investigations and remedial actions, and other land use activities on selenium-impacted lands within the Resource Area.

The following individual tasks and subtasks are proposed to meet these objectives in a manner which is not inconsistent with the National Contingency Plan set forth at 40

CFR Part 300, where applicable, and to provide the necessary information for supporting area wide activities. Anticipated work products to be developed in each task are listed with a tentative schedule provided as Attachment 1. Some tasks will be conducted concurrently and are not restricted to the consecutive order in which they are listed. The actual dates of completion for final products will depend on the availability and sufficiency of existing and/or projected data required to scientifically complete the objectives. Each task will be subject to a detailed scope of work prior to implementation for review and concurrence by the supporting agencies.

### **Task 1 Assessment of Existing Data and Filling Data Gaps**

**Purpose:** Determine the need for additional data and collect data as needed to accomplish the Area Wide Investigation objectives.

#### **Subtasks**

1. **Evaluate existing data** collected as part of the Montgomery Watson work and any other data that may be available from federal, state, tribal and private sector sources for use in the ecological and human health risk assessments and **identify data gaps**. Other ongoing investigations will be considered in determining critical data needs. A Conceptual Site Model (CSM) will be developed and used to help identify data gaps. All existing data will be used to the extent possible to prevent duplication of effort.

**Work Products:**

- Draft CSM
- Final CSM
- Draft Data Gap Technical Memorandum
- Final Data Gap Technical Memorandum

2. **Develop sampling and analysis plan** to fill the data gaps. The sampling plan will be designed to provide the DEQ with the data needed to complete the ecological and human health risk assessments in a time frame that will support future remedial actions. To ensure data consistency and provide for cost efficiencies, IMA's Contractor may be requested to perform portions of the sampling activities associated with filling the identified data gaps. The level of support will be at DEQ's discretion and will be requested of the IMA in a detailed work order format. The resulting work plans developed by IMA's Contractor will be subject to DEQ's approval and will be incorporated into enforceable agreements subject to the terms and conditions of the Area Wide CO/AOC. A DEQ-designated Quality Assurance Monitor may accompany the IMA's sampling team during any sampling events. In instances where a DEQ-designated Quality Assurance Monitor does not accompany the IMA's sampling team, the IMA's contractor may be requested to provide split samples to DEQ, at the Agency's

discretion. DEQ reserves the right to use their own employees or Contractors to implement any studies or sampling activities the agency feels warranted including QA/QC verifications.

Work Products: IMA Work Order Request  
Draft Sampling and Analysis Plan (SAP)  
Final SAP  
Data Summary Report (DSR)

## Task 2 Completion of Ecological and Human Health Risk Assessments

**Purpose:** Complete risk assessments to identify contaminant sources, exposure pathways, receptors, and to provide data to support risk management decision-making. EPA risk protocols will be used by DEQ to guide its Resource Area risk characterization. Exposure scenarios will be identified to reflect the range of conditions and multi-use functions found in the Resource Area and to represent human health exposure scenarios.

### Subtasks

1. Assess adequacy of previous risk characterization work by reviewing the methodology utilized by Montgomery Watson. The work will be reviewed for consistency with acceptable practice and appropriateness for Resource Area risk characterization to include consideration of traditional and cultural perspectives presented by the Shoshone-Bannock Tribes.

Work Product: Review and Recommendation Memorandum

2. Develop protocols to complete risk assessments utilizing, as appropriate, the work previously performed by Montgomery Watson and other data generating sources. The comments developed from the Review and Recommendation Memorandum, and appropriate references, will be used to develop Agency-accepted risk assessment protocols.

Work Products: Draft Protocol Technical Memorandum  
Final Protocol Technical Memorandum

3. Complete risk assessments according to approved protocols which may include deterministic or probabilistic methods where appropriate as determined by DEQ in its discretion and with the concurrence of the Federal Agencies and the Tribes as provided for in the MOU. In any circumstance where DEQ, the Federal Agencies and Tribes decline to utilize probabilistic methods, the Companies reserve the right to perform such analysis at their own expense and to offer said

analysis for consideration by the DEQ, Federal Agencies and Tribes. DEQ, the Federal Agencies and Tribes will include any such analysis submitted by the Companies in the administrative record regarding any decisions based upon risk assessments.

Work Products:                   Draft Human Health Risk Assessment  
   Final Human Health Risk Assessment  
   Draft Ecological Risk Assessment  
   Final Ecological Risk Assessment

### **Task 3 Risk Management - Establish RAOs, RGs, and Risk-based Cleanup Levels for Exposure Media**

**Purpose:**       Develop Remedial Action Objectives (RAOs) and Remediation Goals (RGs) for the Phosphate Mine Resource Area. The RAOs will generally describe objectives on an area wide basis. The RGs will provide more specific statements of the desired endpoint concentrations or risk levels for each identified exposure route. The area wide RAOs, RGs and risk-based clean up levels (RBCULs) will provide discretionary guidance in assisting the site-specific lead agencies (together with site-specific data) in developing site-specific RAOs, RGs and RBCULs that meet both site-specific and area wide ecological and human health protection goals. Area Wide RAOs will consider loading contributions that may affect future Total Maximum Daily Load (TMDL) requirements to be developed for area drainage basins. ARARs identified in Task 7 will also be considered in developing RAOs, RGs and Clean Up Levels.

#### **Subtasks**

1.     Develop, together with Agencies and Tribes, Area Wide RAOs and Preliminary RGs for each exposure pathway and media

Work Products:                   Draft RAO Memorandum  
   Final RAO Memorandum

2.     Develop, together with Agencies and Tribes, Area Wide RGs and Risk-based Cleanup Levels

Work Products:                   Draft RG and Cleanup Level Technical Memo  
   Final RG and Cleanup Level Technical Memo

#### **Task 4 - Development of water quality and aquatic monitoring plan**

**Purpose:** Establish a surveillance monitoring plan to determine level of success of site-specific remediation projects within the Resource Area.

##### **Subtasks**

- 1) Determine appropriate long-term trend monitoring sites and frequency of monitoring to assess surface and groundwater quality, reclamation vegetation, and soils on an area wide basis, including methodologies and QA/QC protocols. The Area Wide Monitoring Plan will consider, and to the extent possible, integrate the Companies' site-specific monitoring requirements to minimize repetition and/or redundancy.
- 2) Determine appropriate long-term trend monitoring sites and frequency of monitoring to assess potential biological impacts including bioaccumulation in aquatic trophic levels (e.g. aquatic macroinvertebrates, fishes).
- 3) Prepare Comprehensive Monitoring Plan with a Quality Assurance Project Plan (QAPP) incorporating above elements and any additional items as warranted.

**Work Products:** Draft Comprehensive Monitoring Plan and QAPP  
Final Comprehensive Monitoring Plan and QAPP

#### **Task 5 - Development of Best Available Technology (BAT)/Remediation Techniques Manual for historic sites**

**Purpose:** To develop a comprehensive list of available remediation techniques (and innovative technology currently in development) for inactive, past-use sites that have broad applicability and can be applied to other or similar sites in the Resource Area. This list will be used, together with remedial technologies identified during the site specific work (EE/CA's and SI's), to guide response actions.

##### **Subtasks**

- 1) Assemble a technical committee of experts from federal/state/tribal agencies, mining companies, and public/private sector to assist IDEQ in compiling a summary of known or existing technologies for inactive/abandoned sites.
- 2) Identify problems that require development of new BATs or remediation techniques, identify potential BATs to address those problems, and recommend potential pilot testing programs for BATs with a high probability of success in Area Wide applications. Implementation of the pilot testing program would not

be a part of the Area Wide Investigation (part of the recommendation would be how to implement the pilot project).

Work Products: Draft BATs/Remediation Techniques Guidance Manual  
Final BATs/Remediation Techniques Guidance Manual

### **Task 6 - Public Involvement/Participation Activities**

**Purpose:** To ensure the participation and continued dissemination of information to interested members of the public including any special measures necessary to provide information and an opportunity to participate to tribal members. This process will be specific to the Agency-lead Area Wide Activities and may be supplemented by public involvement activities being conducted by the IMA and former Selenium Working Group participants. However, the IMA and former Selenium Working Group representatives will not, except as set forth specifically by agreement, communicate agency positions to the public. The following tasks will be performed in support of Public Involvement.

1. Develop a formal Community Relations Plan that details public information efforts, projected public comment periods, location of public information repositories, and summary of interested public and private individuals and organizations.
2. Develop and plan periodic Public Information Meetings summarizing the status and results of Area Wide activities.
3. Establish and maintain Administrative Record and public information repository.

Work Products: Draft Community Relations Plan  
Final Community Relations Plan  
Administrative Record

### **Task 7 – Other Activities to Support Future Operations and Remedial Actions in the Resource Area**

**Purpose:** Develop information that is specifically needed to support future agency-approved remedial actions and other land use activities. Agencies and Mining Companies will be consulted as to additional activities that may need to occur under this task. The following tasks have been identified as critical information support items.

1. Identify ARARs (including other information "to be considered" (TBC)) for the Resource Area that pertain to RAOs, RGs and risk-based clean up levels. The federal agencies and tribal representatives will be asked for assistance in summarizing their respective ARARs. The ARARs will be used as appropriate to support future agency-approved remedial actions in the Resource Area.

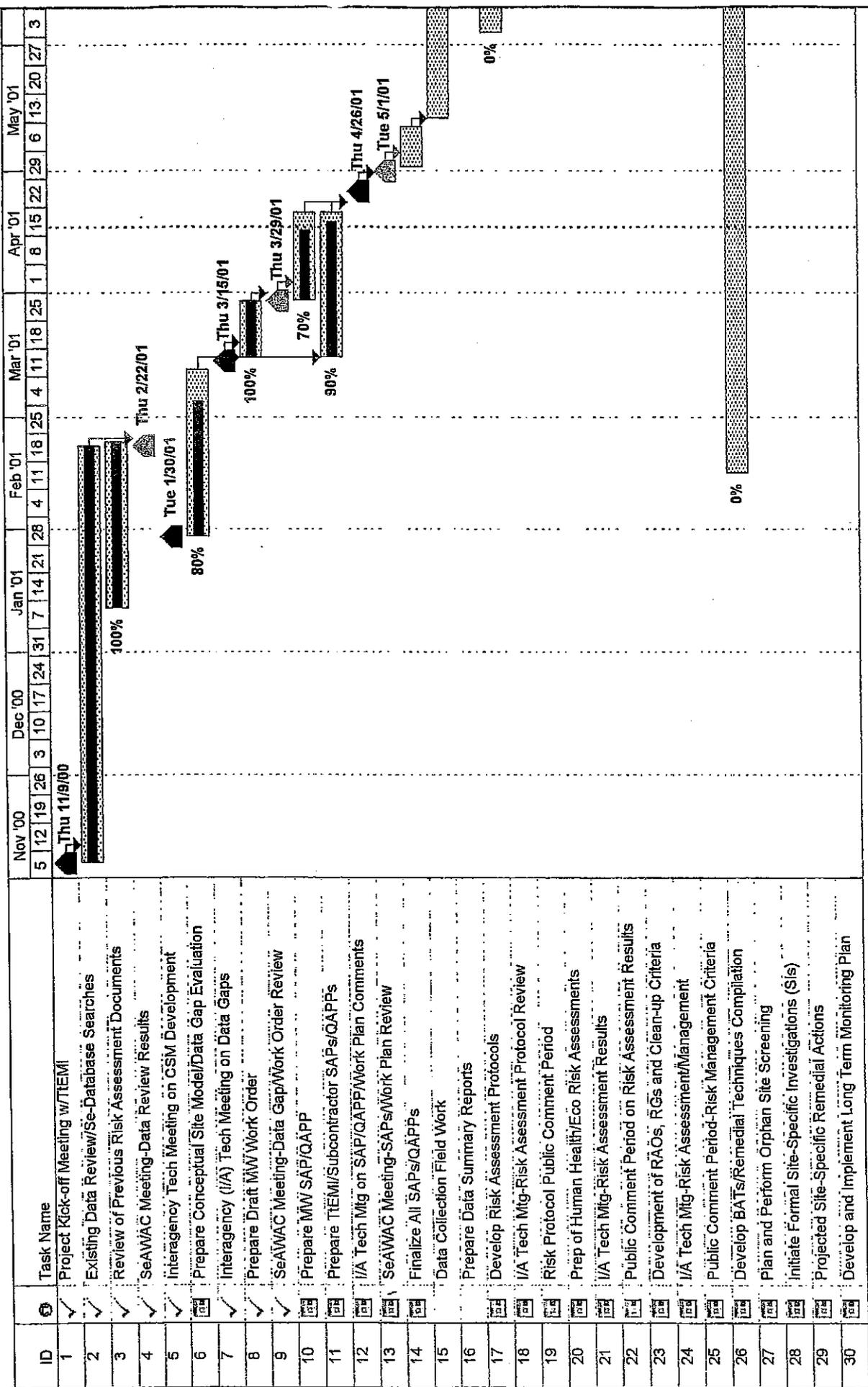
Work Products:                      Draft ARAR Summary  
    Revised ARAR Summary

2. Assist federal, tribal and state land management agencies, as requested, in developing guidelines for livestock grazing on selenium-impacted lands. Policy statements pertaining to this issue will be authored by the appropriate implementing agencies.
3. Coordinate and draft official interagency responses, data interpretations and technical conclusions in support of Area Wide Investigation decision-making and policy development.
4. With site-specific lead agencies, participate in the development of generic site-specific scope of work templates that address area wide goals and may be used, as appropriate, on a site-specific basis to facilitate interagency consistency in investigative and remedy phases of future site-specific remedial activities. However, lead agencies may choose to proceed with site-specific activities prior to the finalization of any associated template.
5. Incorporate relevant site-specific data, as developed, into applicable Area Wide Investigation objectives.
6. Consistent with the MOU and with the parties' obligations under any order or agreement with the responsible mining companies, continue coordination with the IMA Se Committee members and the DEQ Se Area Wide Advisory Committee (SeAWAC, former Se Steering Committee) participants to encourage cooperative efforts, where practicable. Membership in the SeAWAC shall include at least one representative from each mining company and a representative from any state, local or national public interest groups, or state or local government, expressing a desire to participate. At a minimum, the DEQ will solicit comments from the SeAWAC participants on drafts of the *Site-specific Statement of Work Template, Data Gap Analysis Technical Memorandum, 2001 Area Wide Sampling Plan, and Area Wide Monitoring Program, Risk Assessment Protocol Technical Memorandum, Risk Assessment Results and Area Wide Risk Management Guidance Document (including suggested RBCLs)*. To allow for potential schedule constraints, this committee review process may be conducted

through electronic correspondence with the approval of the participants. Additionally, the DEQ will conduct formal 30-day public comment periods for the *Risk Assessment Protocol Technical Memorandum, Risk Assessment Results and Area Wide Risk Management Guidance Document (including suggested RBCLs)*.

7. Interact with Shoshone-Bannock Tribes and Bureau of Indian Affairs to develop and consider a traditional and cultural perspective into the Area Wide Investigation risk assessment work.

ATTACHMENT 1: Tentative Schedule for Area Wide Investigation Activities



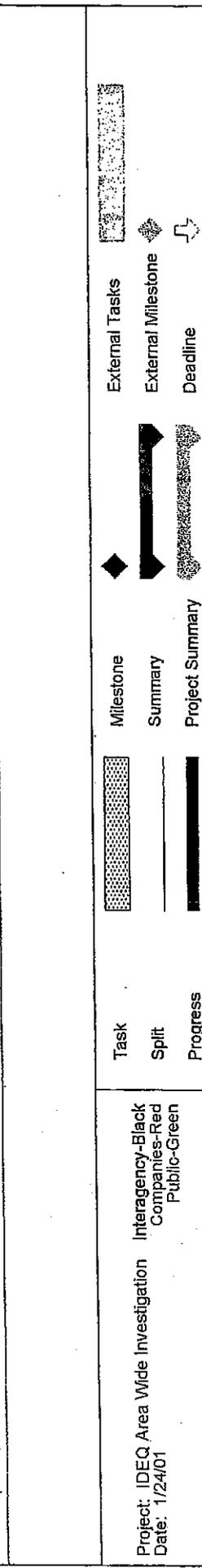
Legend for Gantt Chart symbols:

- Task: Solid black bar
- Split: Dotted bar
- Progress: Stippled bar
- Milestone: Diamond symbol
- Summary: Arrow symbol
- Project Summary: Dotted bar with arrow
- External Tasks: Stippled bar with arrow
- External Milestone: Diamond symbol with arrow
- Deadline: Dotted bar with arrow

Project: IDEQ Area Wide Investigation  
 Date: 1/24/01

ATTACHMENT 1: Tentative Schedule for Area Wide Investigation Activities

ID	Task Name	Jun '01		Jul '01		Aug '01		Sep '01		Oct '01		Nov '01		Dec '01		J		
		10	17	24	1	8	15	22	29	5	12	19	26	2	9		16	23
1	Project Kick-off Meeting w/TEMI																	
2	Existing Data Review/Se-Database Searches																	
3	Review of Previous Risk Assessment Documents																	
4	SeAWAC Meeting-Data Review Results																	
5	Interagency Tech Meeting on CSM Development																	
6	Prepare Conceptual Site Model/Data Gap Evaluation																	
7	Interagency (I/A) Tech Meeting on Data Gaps																	
8	Prepare Draft MW Work Order																	
9	SeAWAC Meeting-Data Gap/Work Order Review																	
10	Prepare MW SAP/QAPP																	
11	Prepare TEMI/Subcontractor SAPs/QAPPs																	
12	I/A Tech Mtg on SAP/QAPP/Work Plan Comments																	
13	SeAWAC Meeting-SAPs/Work Plan Review																	
14	Finalize All SAPs/QAPPs																	
15	Data Collection Field Work																	
16	Prepare Data Summary Reports																	
17	Develop Risk Assessment Protocols																	
18	I/A Tech Mtg-Risk Assessment Protocol Review																	
19	Risk Protocol Public Comment Period																	
20	Prep of Human Health/Eco Risk Assessments																	
21	I/A Tech Mtg-Risk Assessment Results																	
22	Public Comment Period on Risk Assessment Results																	
23	Development of RAOs, RGs and Clean-up Criteria																	
24	I/A Tech Mtg-Risk Assessment/Management																	
25	Public Comment Period-Risk Management Criteria																	
26	Develop BATs/Remedial Techniques Compilation																	
27	Plan and Perform Orphan Site Screening																	
28	Initiate Formal Site-Specific Investigations (SIs)																	
29	Projected Site-Specific Remedial Actions																	
30	Develop and Implement Long Term Monitoring Plan																	

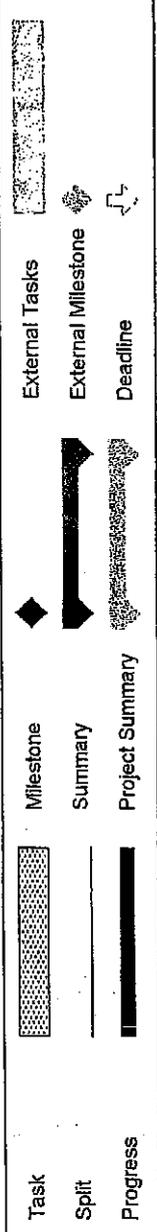


Task  
 Split  
 Progress  
 Milestone  
 Summary  
 Project Summary  
 External Tasks  
 External Milestone  
 Deadline

Project: IDEQ Area Wide Investigation  
 Date: 1/24/01  
 Interagency-Black  
 Companies-Red  
 Public-Green

ATTACHMENT 1: Tentative Schedule for Area Wide Investigation Activities

ID	Task Name	Jan '02		Feb '02		Mar '02		Apr '02		May '02		Jun '02		Jul '02				
		13	20	27	3	10	17	24	3	10	17	24	31	7	14	21	28	4
1	Project Kick-off Meeting w/TIEM																	
2	Existing Data Review/Se-Database Searches																	
3	Review of Previous Risk Assessment Documents																	
4	SeAWAC Meeting-Data Review Results																	
5	Interagency Tech Meeting on CSM Development																	
6	Prepare Conceptual Site Model/Data Gap Evaluation																	
7	Interagency (IA) Tech Meeting on Data Gaps																	
8	Prepare Draft MW Work Order																	
9	SeAWAC Meeting-Data Gap/Work Order Review																	
10	Prepare MW SAP/QAPP																	
11	Prepare TtEMI/Subcontractor SAPs/QAPPs																	
12	IA Tech Mtg on SAP/QAPP/Work Plan Comments																	
13	SeAWAC Meeting-SAPs/Work Plan Review																	
14	Finalize All SAPs/QAPPs																	
15	Data Collection Field Work																	
16	Prepare Data Summary Reports																	
17	Develop Risk Assessment Protocols																	
18	IA Tech Mtg-Risk Assessment Protocol Review																	
19	Risk Protocol Public Comment Period																	
20	Prep of Human Health/Eco Risk Assessments																	
21	IA Tech Mtg-Risk Assessment Results																	
22	Public Comment Period on Risk Assessment Results																	
23	Development of RAOs, RGs and Clean-up Criteria																	
24	IA Tech Mtg-Risk Assessment/Management																	
25	Public Comment Period-Risk Management Criteria																	
26	Develop BATs/Remedial Techniques Completion																	
27	Plan and Perform Orphan Site Screening																	
28	Initiate Formal Site-Specific Investigations (Sis)																	
29	Projected Site-Specific Remedial Actions																	
30	Develop and Implement Long Term Monitoring Plan																	



**Task**  
 Intagency-Black  
 Companies-Red  
 Public-Green

**Milestone**  
 Summary  
 Project Summary

**External Tasks**  
 External Milestone  
 Deadline

Project: IDEQ Area Wide Investigation  
 Date: 1/24/01





# Southeast Idaho Phosphate Mine Sites for Selenium Area Wide Investigations

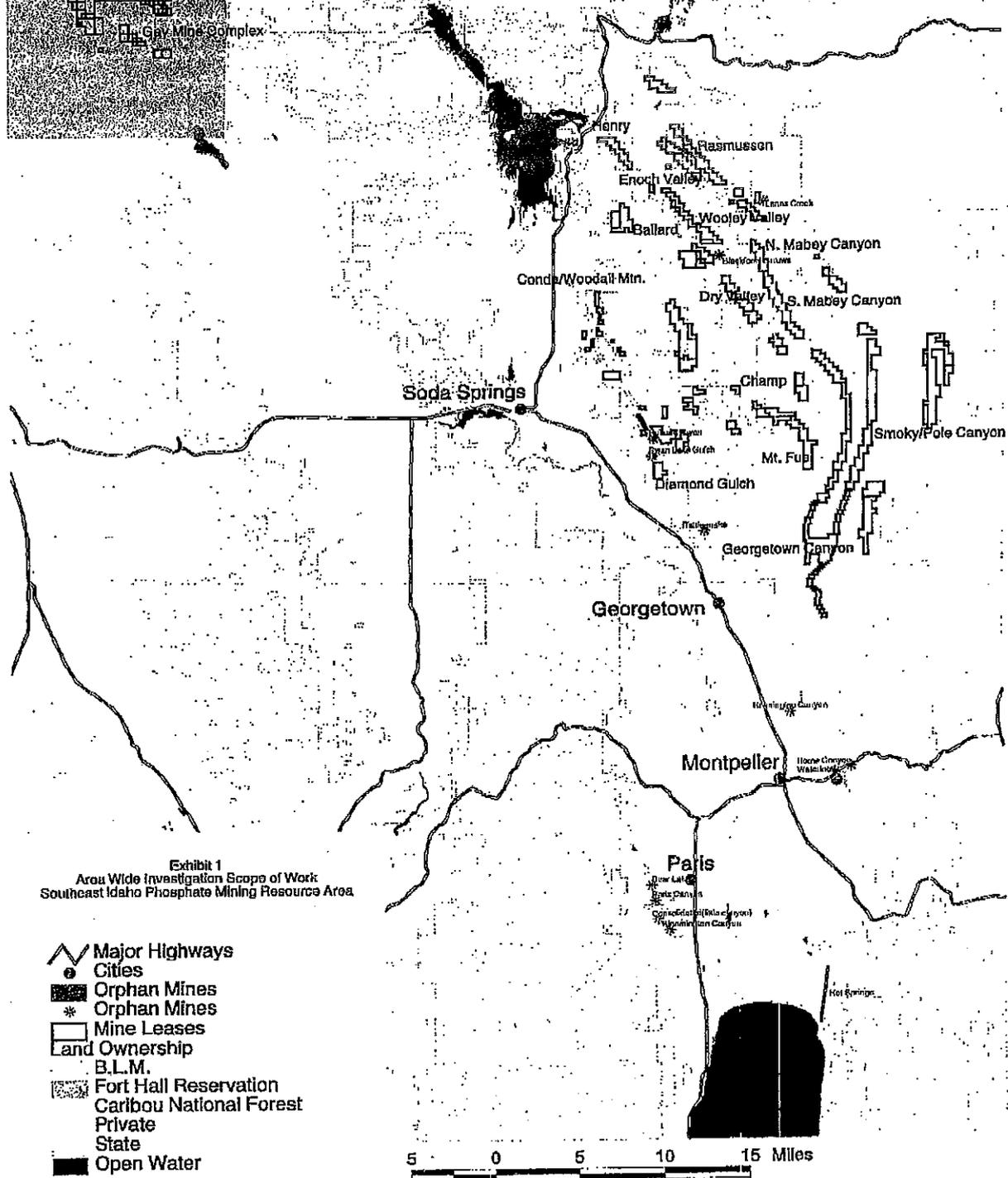
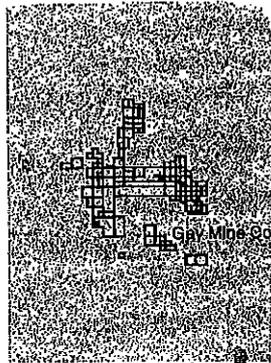
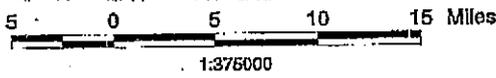


Exhibit 1  
Area Wide Investigation Scope of Work  
Southeast Idaho Phosphate Mining Resource Area

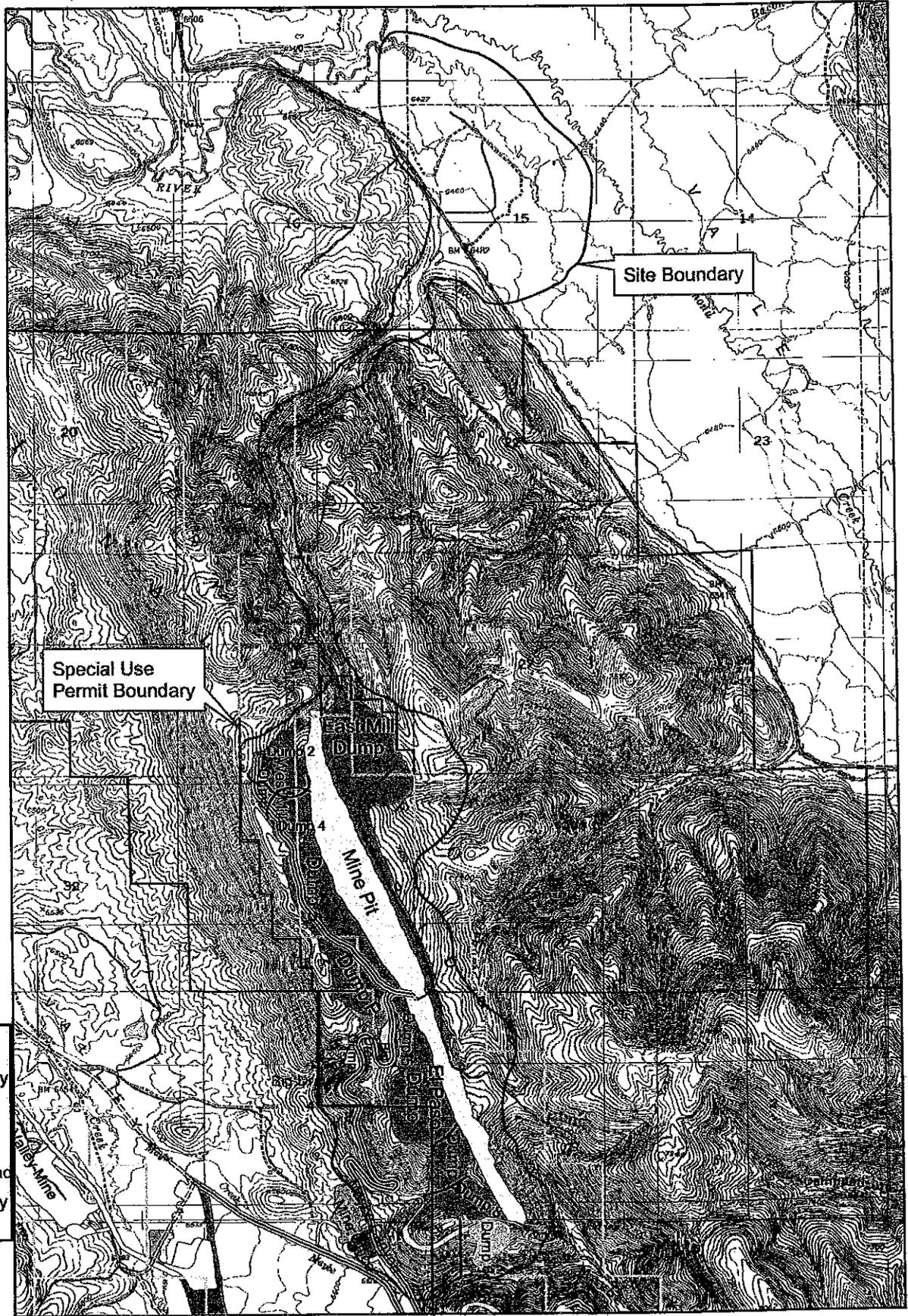
- Major Highways
- Cities
- Orphan Mines
- Orphan Mines
- Mine Leases
- Land Ownership
- B.L.M.
- Fort Hall Reservation
- Caribou National Forest
- Private
- State
- Open Water



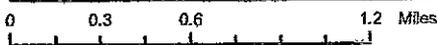
Note: Orphan Sites not yet located  
Wyodak Coal Company  
Taylor Creek Adit



mc/jj 4/17/01  
cwork/temp/matt/state\_lease.apr  
Size: 11x17



- Legend**
- Forest Boundary
  - ==== Improved Road
  - - - - Trail
  - Unimproved Road
  - - - - Lease Boundary
  - ==== Access Road



# North Maybe Mine Location

