LIBBY PLACER MINING COMPANY
A Montana Corporation founded in 1901

6810 N. Roxborough Park Rd
Littleton, CO 80125

May 1, 2015

Mr. David Schmid
Objection Reviewing Officer
USDA Forest Service
200 East Broadway
Missoula, MT 59807

RE: Montanore Project Final EIS and Draft ROD

Dear Mr. Schmid:

The purpose of this letter is to object to certain aspects of the Final EIS and Draft ROD for the Montanore Project.

By way of background, the Libby Placer Mining Company ("LPMC"), a 100+ year old family owned Montana corporation, owns approximately 1070 acres of land along Libby Creek adjacent to the proposed Montanore mine (see map attached at Exhibit I).

LPMC has submitted comments throughout the permitting process, starting with scoping comments made in August 2005, followed by comments to the Draft EIS ("DEIS") in June 2009 and comments to the Supplemental DEIS ("SDEIS") in 2011. In addition, LPMC met with the Director of the Montana DEQ in Helena, MT in June 2013 to express its concerns about the Montanore Project and its impact on LPMC land.

As you know, and as discussed in more detail below, pursuant to NEPA and MEPA, the Forest Service and the Montana Department of Environmental Quality (the "Agencies") are required to evaluate "**every** significant aspect" (emphasis added) of the environmental impacts or a proposed action, including cumulative and connected impacts occurring on **private** or non-federal land. MEPA requires that the Agencies performing the environmental review take into account the regulatory impact to private property rights.

As shown on Exhibit I, the mine plant processing plant is located at the southwest corner of LPMC land, the Poorman tailings site is located at the northwest corner of LPMC land and the main mine access road (now proposed to be the Libby Creek Road, #231) bifurcates LPMC's land. LPMC is the party most impacted by the Montanore Project due to the proximity of the Project to its private land.

I. Evaluation of Impacts to Private Property

As noted in the Draft Record of Decision ("DROD"), the Montanore EIS process is a joint project with the Montana Department of Environmental Quality ("DEQ") as co-lead agency. In particular, the FEIS is a joint document prepared by both agencies. It therefore is required to be in compliance with both NEPA **and** MEPA.

LPMC objects to the fact that the FEIS fails to evaluate impacts to LPMC's property from the Montanore Project. The failure to evaluate impacts to private property violates both NEPA and MEPA.

NEPA is an action-forcing statute. Its sweeping commitment is to "prevent or eliminate damage to the environment and biosphere by focusing government and public attention on the environmental effects of proposed agency action". *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989). It requires the federal agency to "consider **every significant aspect** of the environmental impact of a proposed action", *Vermont Yankee Power Corp. v. Natural Resources Defense Council*, 435 U.S. 519, 553 (1978) (emphasis added). NEPA requires that the Forest Service take a "hard look" at the environmental impacts of the Montanore mine proposal. See *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971); *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1211 (9th Cir. 1998) (citing *Oregon Natural Resources Council v. Lowe*, 109 F.3d 521, 526 (9th Cir. 1977) (court must ensure that the agency took a "hard look" at the consequences of its proposed action)).

The Forest Service must consider all direct, indirect and cumulative environmental impacts of the proposed action. 40 CFR Sec. 1502.16; 1508.8; 1508.25(c). Agencies are required to analyze cumulative and connected impacts occurring on **private** or non-federal land. *Natural Resources Defense Council v. U.S. Forest Service*, 421 F.3d 797, 814-815 (9th Cir. 2005). An agency must "give a realistic evaluation of the total impacts and cannot isolate a proposed project, viewing it in a vacuum". *Grand Canyon Trust v. FAA*, 290 F.3d 339, 342 (D.C. Cir. 2002).

The United States Supreme Court has made clear that agencies must evaluate impacts to private and other non-agency lands.

> Our understanding of the congressional concerns that led to the enactment of NEPA suggests that the terms "environmental effect" and "environmental impact" in Sec. 102 be read to include a requirement of a **reasonably close causal relationship between a change in the physical environment and the effect at issue**. This requirement is like the familiar doctrine of proximate cause from tort law. See generally W. Prosser, Law of Torts, ch.7 (4th ed. 1971). The issue before us, then, is how to give content to this requirement. This is a question of first impression in this Court.

> The federal action that affects the environment in this case is permitting renewed Operations of TMI-1. The direct effects on the environment of this action include the release of low-level radiation, **increased fog in the Harrisburg area (caused by operation of the plant's cooling towers), and the release of warm water into the Susquehanna River. The NRC has considered each of these effects in its EIS** and and again in the EIA. See App.51-58. Another effect of renewed operation is a risk of a nuclear accident. The NRC has also considered this effect. See *id.*, at 58-60.
>
> *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983) (Emphasis added).

The same principles are carried over into MEPA, which likewise requires that agencies take a "hard look" at potential impacts of proposals. *Ravalli County Fish and Game v. DSL* (1995), 273 Mont. 371, 377, 903 P.2d 1362. "Implicit in the requirement that an agency take a hard look at the environmental consequences of its actions is the obligation to make an adequate compilation of relevant information, to analyze it reasonably, and to consider all pertinent data." *Clark Fork Coalition v. Montana DEQ* (2008), 2009 MT 407, 47.

Indeed, MEPA explicitly requires that environmental review take into account the impact to private property and private property rights. Both Sec. 75-1-102(2) and Sec. 75-1-103(2)(c) , MCA, note that MEPA must be read as having a purpose to "protect the right to use and enjoy private property free of undue government regulation". Further, MEPA requires the agency to "develop methods and procedures that ensure that state government actions that may impact the human environment in Montana are evaluated for regulatory restrictions on private property". Sec. 75-1-201 (1)(b)(iii), MCA.

Here, despite the fact the LPMC's property will be the most directly and adversely affected private property, the agencies have utterly failed to evaluate the specific impacts to this property by their "regulatory action", i.e. the granting of the mining permit.

The Draft Record of Decision ("DROD") states (Section 1.4.1) that "A full disclosure of impacts as a result of my decision is described in Chapter 3 of the Final EIS for the Montanore Project".

The DROD statement regarding a "full disclosure of impacts" is clearly incorrect. In responding to LPMC's concerns about the lack of evaluation of the impacts to LPMC land, the Agencies assigned "Issue Code 4003" in Appendix M to this issue. The response consisted of the following:

> The effects of the mine alternatives on adjacent private land are described in detail in the Air Quality, Hydrology, Aquatic Life and Fisheries, Scenery and Sound sections of the DEIS, SDEIS and FEIS. The land use discussion in Section 3.15.4 of the FEIS was revised to further describe and cross-reference the potential effects of mine development on adjacent private lands.

This response is very inadequate on a number of fronts. LPMC's comments about impact to its lands were made in response to the *lack of discussion* about this topic in the DEIS and SDEIS. The impacts to LPMC lands are not "described in detail" in the DEIS and SDEIS – that is the reason LPMC submitted comments concerning impacts. So, reference to the DEIS and SEIS are to no effect. In the FEIS, there is only one place where a substantive comment regarding LPMC land is made, Section 3.17.4 concerning scenic impact. Other than that, the sections referred to offer only generic descriptions of impacts to air quality, fisheries, water and sound. There is nothing specific discussing impact to LPMC (other than Section 3.17.4).

Surprisingly, Section 3.15.3.1, titled "Private Lands" in the Land Use – Affected Environment section, the place where you would logically expect there to be a *detailed* discussion concerning impacts to LPMC lands, there is no mention of LPMC *at all.* Particularly unacceptable is the reference to 3.15.4 of the FEIS which the Forest Service says "was revised to further describe and cross- reference the potential impacts of mine development on adjacent lands". Section 3.15.4 does in indeed contain a reference to private land near mine facilities – it states that "adjacent land use during the operation would be affected to some extent" and that disturbance from mine facilities "may result in indirect effects on adjacent private lands" – and nothing more.

In another FEIS document, the Final Lead Agencies 404(b)(1) Analysis, a report prepared by ERO Resources Corp. for the Agencies dated, March 2015, in Subpart H – Actions to Minimize Adverse Effects, LPMC is not mentioned or referenced once, even though it is **the** private party that would clearly be impacted the most from the Montanore Project.

The DROD does discuss several issues raised by LPMC during the DEIS and SDEIS process (DROD, Section 1.4.4.1.8), but it (and the FEIS) fail to address the cumulative and connected impacts in a comprehensive fashion as required by NEPA and MEPA (referenced above). Significantly, the FEIS and DROD fail to address impacts from the Poorman tailings impoundment location, fail to address impacts to LPMC's senior water rights and fail to address an entirely new issue (discussed below in Section V), the decision to use the Libby Creek Road, #231, as the mine access road and fails to address other issues as presented herein.

The lack of discussion of impacts to LPMC water rights is notable. LPMC owns four (4) senior water rights in the Montanore Project area, three (3) on Libby Creek (a mining water right, a domestic water right and a stockwatering right) and one (1) mining water right on Ramsey Creek.

The FEIS states (Section 3.12.4.2) that:

> "Baseflow changes and appropriations by MMC from Libby Creek would adversely affect senior water rights. Baseflow changes may also affect senior water rights in Ramsey Creek."

The Agencies propose to maintain a minimum 40 cfs flow at Surface Water Monitoring Station LB 2000 located at the confluence of Libby Creek and Bear Creek and represent that this measure protects senior water rights. The Forest Service has a 40 cfs water right dating from

2007 for a section of Libby Creek starting at Bear Creek to just above Hoodoo Creek (FEIS, Section 3.12.3).

Maintaining 40 cfs at LB 2000 does not necessarily protect LPMC's senior 1 cfs water right with a diversion point far upstream from LB 2000. The FEIS does not address any impacts to LPMC's senior mining water right or senior domestic and stockwatering water rights in Libby Creek.

Regarding LPMC's 1 cfs senior water right on Ramsey Creek, the FEIS states (Section 3.12.4.3.2):

> "If the senior water right on Ramsey Creek would be adversely affected during any mining phase, MMC would develop a plan during the final design to convey treated water from the Water Treatment Plant to a location upstream from the right's point of diversion."

As noted several times in previous sections of this Objection Letter, NEPA procedures must ensure that environmental information is available to public officials and citizens **before** decisions are made and before actions are taken. NEPA is not designed to postpone analysis on an environmental consequence to a point after the decision has already been made. The FEIS fails to adequately address impacts to LPMC's senior water rights on Libby Creek and it postpones the analysis of the Montanore Project's impact to LPMC's senior Ramsey Creek water right to a plan to be developed during the final design phase.

In summary, the lack of full disclosure of impacts to LPMC lands is not consistent with what is required pursuant to NEPA and MEPA and is simply unacceptable.

II. Poorman Tailings Impoundment

LPMC objects to the location of the tailings impoundment site as it is currently proposed.

The tailings impoundment analysis for the Montanore Project is contained in a report dated September 16, 2011 that was prepared by ERO Resources Corp. titled "Final Tailings Disposal Alternatives Analysis, Montanore Project EIS, Libby, Montana" (the "ERO Report").

Section 5.2.2 of the ERO Report discusses the evolution of the process by which tailings impoundment options for the Montanore Project were evaluated and how the screening and evaluation criteria were applied to potential impoundment locations.

As discussed in Section 5.2.2 of the ERO Report, in 2007, before the DEIS was issued, the Agencies developed six options for an impoundment site in the Little Cherry Creek and Poorman

Creek area. Four of the six options were discarded and one Poorman option and one Little Cherry Creek option were retained from this analysis.

Later, the Corps of Engineers requested that the Agencies re-evaluate the impoundment sites evaluated in prior alternative analyses in accordance with 404(b)(1) guidelines. For prior analyses (i.e., the ones performed by the Agencies in 2007 and other prior analyses), "evaluation criteria differed among the analyses and did not address all the current issues associated with regulatory changes" (ERO Report, Section 5.2.2). To address the Corp of Engineers' request to re-evaluate the previous analyses, the Agencies initiated a new analysis of **all** impoundment sites previously evaluated. That new analysis is the ERO Report. The Little Cherry Creek and the Poorman sites "were included in the analysis" (ERO Report, Section 5.2.2).

The Agencies developed three successive screening levels to be used in analyzing impoundment alternatives in detail in the ERO Report. The successive screening levels were designed to narrow the range of tailings impoundment options analyzed in detail for the EIS. The first level of screening ("Level I") included the application of a 2,000 foot buffer "for the impoundment sites" identified in the ERO Report (ERO Report, Section 5.2.2.1). This included the Little Cherry Creek and the Poorman Creek sites previously evaluated, for which "conceptual" layouts had previously been developed, but which were now being re-evaluated under the new ERO Report review and analysis.

The first level screening criteria included the application of a 2,000 foot buffer zone for **all** impoundment alternatives evaluated in the new tailings impoundment analysis performed by ERO:

> "To standardize disturbance areas for the impoundment sites during the screening, a 2,000 foot buffer zone was applied to **each** impoundment footprint …" [ERO Report, 5.2.2.1] Emphasis added

Violating their own Level I screening criteria for the new impoundment site evaluation, however, the Agencies did not apply the 2,000 foot buffer to the Poorman impoundment site (this was discussed in Section I of LPMC's December 15, 2011 SDEIS comment). As a result, and as stated in Attachment 1 to the DROD – Selected Alternatives, the Poorman tailings impoundment site abuts LPMC land:

> "Private property not owned by MMC is located 300 feet east of the southern two-thirds of where the tailings dam alignment will be located" - [Attachment 1, Selected Alternatives, Section 1.1.2.5.1]

As noted above, LPMC raised this issue in its December 15, 2011 SDEIS comment. The Agencies' response, contained in Appendix M, 1500, of the EIS, argues that the reason a 2,000 foot buffer was not applied to the Poorman tailings impoundment site was because the disturbance area at the Poorman site was already known. It goes on to state that the buffer was

"also used to account for tailings impoundment site evaluations in prior alternatives analyses that were completed using lower impoundment capacity requirements than currently necessary for the Montanore Project".

The Agencies justification for not applying a 2,000 foot buffer zone at the Poorman impoundment site has no merit and is not consistent with the facts or the record. First, Section 5.2.2 of the ERO Report very specifically and methodically presents the screening process used for evaluating tailings impoundment alternatives. It specifically states that a 2,000 foot buffer zone was applied to **each** impoundment footprint. The ERO Report does not state that a 2,000 foot buffer was applied to each impoundment footprint except for the Poorman site because the disturbance area was already known. Some measure of the disturbance area at the Poorman site was known from the work that had been performed in 2007, but it was known in connection with a different need – for a previous, smaller size impoundment (i.e., "lower impoundment capacity requirements than currently necessary for the Montanore Project") and, in any event, was no longer applicable within the context of the new impoundment analysis performed by ERO.

Section 5.2.2.1 of the ERO Report states:

> "Tailings impoundment site evaluations in prior alternatives analyses were completed using lower impoundment capacity requirements than currently necessary for the Montanore Project."
>
> "For Level I screening, the agencies used a capacity requirement of 120 million tons."

Whatever work had been performed on the Poorman site in prior analyses (those dating from 2007), it was no longer relevant within the context of the new impoundment analysis performed by ERO.

Second, the ERO Report states that the purpose of the application of a 2,000 foot buffer was to "standardize" disturbance areas for the impoundments sites evaluated during the new screening mandated by the Corp of Engineers. The Level I screening process focused on impoundment sites that could accommodate 120 million tons of tailings, not ones with the previous "lower impoundment capacity requirements than currently necessary for the Montanore Project". In other words, the tailings evaluation performed by ERO was starting with a clean slate, focused on a need for a 120 million ton impoundment capacity (versus a previous impoundment capacity of 90-100 million tons ; Noranda Minerals Corp, Final EIS, page 97). With the Poorman site excepted from the 2,000 foot buffer criteria, the Poorman site was not held to the same level of "standardization" as the other impoundment sites evaluated for the new capacity requirement of 120 million tons of tailings.

By not applying the 2,000 foot buffer zone to the Poorman tailings impoundment site, the Agencies violated their own Level I tailings impoundment screening criteria. Relying on disturbance data for a previous, smaller impoundment at the Poorman site and claiming that the disturbance area was therefore "known" and that the 2,000 foot buffer therefore need not be applied, is again, not consistent with facts concerning the evolution or the record of the tailings

evaluation process. This miscarriage of the tailings impoundment process by the Agencies is not acceptable.

Accordingly, LPMC requests that the Objection Reviewing Officer mandate that either i) the 2,000 foot buffer be applied to the Poorman tailings impoundment site or ii) that an alternative tailings impoundment site be selected.

III. Tailings Impoundment Stability

Another issue that continues to concern LPMC relates to tailings impoundment stability. This subject was also discussed in detail in LPMC's December 15, 2011 SDEIS comment, Section III, Tailings Impoundment Stability Issues. Again, LPMC suggests the Objection Reviewing Officer review those comments in conjunction with the comments made below.

Klohn Crippen Berger, a geotechnical and engineering firm, was retained by Mines Management, Inc. in 2005 to prepare a report titled "Montanore Project – Tailings Technical Design Report" (the "2005 Klohn Crippen Report") which focused on the Little Cherry Creek tailings site alternative, immediately adjacent to the proposed Poorman tailings impoundment site

The 2005 Klohn Crippen Report states (page 70),

> "we anticipate that the impoundment will be classified as "*high hazard*"

In section 3.14.3.2.2 of the FEIS, reference is made to the 2005 Klohn Crippen report and to the Little Cherry Creek tailings impoundment dam as a "large, high-hazard dam" (page 746). The Poorman tailings impoundment dam would be of similar size and can therefore also be characterized as "high hazard".

The reasons for this conclusion were the existence of i) glaciolacustrine clays in the area (2005 Klohn Crippen Report, page 35 and elsewhere) and ii) that fact that the Montanore Project is a moderately high seismic area (2005 Klohn Crippen Report, page vii). The impact of seismic activity cannot be underestimated. During 2012, earthquakes in the Cabinet Mountains area where the Montanore Project is located, forced the closure of Revette Mining Inc.'s Troy Mine for two years.

The proposed Poorman tailings impoundment location lies immediately south of, and overlaps with, the Little Cherry Creek impoundment location. Glaciolacustrine clays are known to exist in this area as well (SDEIS, Volume 2, Figure 64).

In Section 3.14.3.2.2 of the FEIS, stability of the Little Cherry Creek impoundment dam and the Poorman impoundment dam are discussed. It states, referring to the existence of liquefiable glaciolacustrine clays:

> "Under the Little Cherry Creek Impoundment Main Dam foundation area, the soils with SPT's that were found to indicate potentially liquefiable foundation materials are generally near the ground surface".

Section 3.14.3.2.3, addressing stability at the Poorman tailings site and comparing it to conditions known to exist at the Little Cherry impoundment site:

> "The two sites are adjacent to one another and based on limited drilling information from the Poorman site appear to have similar foundation conditions."

If an impoundment in the Little Cherry Creek area would be classified as "high hazard", then given that a similar set of facts exist in the Poorman area, it is reasonable to conclude that an impoundment in the Poorman area would also be "high hazard".

A further issue concerning the Poorman tailings impoundment site concerns the uncertainty concerning the geotechnical suitability of the site. The DROD states (page 38):

> "A preliminary site exploration program will be completed to confirm the geotechnical suitability of the Poorman tailings impoundment site"

Section 3.14.3.2.3 of the FEIS states, referring to the Poorman site (Alternative 3):

> "site specific data for Alternative 3 are **limited** and Alternative 3 would be a **critical** facility to the project" - Emphasis added

Such a high level of uncertainty is unacceptable under NEPA and MEPA. As noted above, "NEPA procedures must ensure that environmental information is available to the public officials and citizens **before** decisions are made and before actions are taken (emphasis added – 40 CFR Sec. 1500.1(b).

"NEPA is not designed to postpone analysis of an environmental consequence to the last possible moment. Rather it is designed to require such analysis as soon as it can reasonably be done." *Kern v. BLM, 284 F.3rd 1062, 1072 (9th Cir. 2002).*

Clearly a preliminary site exploration program should be completed before a decision is made to select an impoundment site. How can a key decision concerning such a "critical" facility as the impoundment site location be made in the absence of preliminary geotechnical data to determine its suitability? Furthermore, there is no reason why performing such evaluation and analysis cannot be reasonably done (and in fact, should be done) prior to making a decision concerning the selection of a tailings impoundment site.

An additional stability issue with the Poorman impoundment site concerns the potential for overtopping the impoundment dam structure. In Section 3.14.3.2.3 of the FDEIS, it states:

> "At the end of year 16, mud wave action from the liquefied tailings and displacement of water stored in the impoundment could result in the overtopping of the embankment crest and possible breach of the dam. The potential for release of the tailings from the impoundment may be the most critical situation related to Alternative 3."

This is new information concerning the Poorman impoundment site not previously disclosed in the DEIS or SEIS. The fact that this possibility exists is further reason why the Agencies should honor their original impoundment screening criteria and apply the 2,000 foot buffer that was applied to each impoundment footprint that was originally evaluated (except Poorman) . Given the potential for overtopping as described in Section 3.14.3.2.3, the 300 foot distance between the Poorman impoundment as proposed and LPMC's land is unreasonable and unacceptable. The 2,000 foot buffer must be applied to the Poorman impoundment site, as it was for every other impoundment site considered.

Section 3.143.2.3 goes on to state, referring to the potential for overtopping and breach of the impoundment dam:

> "Such a failure mode has **not been quantified** but should be included in the final design of the facility." - Emphasis added

The FEIS has identified the impoundment as a "critical facility", yet work to quantify a catastrophic failure of that facility, with resultant catastrophic consequences for LPMC, has not been performed and is categorized as something that "should" be (versus "will be" or "must be") included in the final design of the facility.

As noted above, NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and actions are taken" 940 CFR Sec. 1500.1(b). NEPA is not designed to postpone analysis of an environmental consequence to the last possible moment (e.g., "final design of the facility"). Rather NEPA requires such analysis as soon as it can be reasonably be done (quantifying the failure mode can be done now).

Clearly, the failure of the Agencies to fully evaluate and quantify a failure mode for the Poorman tailings impoundment structure does not meet the requirements of NEPA and MEPA. This omission is particularly egregious given the tailings impoundment constitutes a critical aspect of the project and since the consequences of impoundment failure would have such a catastrophic impact to LPMC's land.

In contrast to the stability information discussed above, the DROD states in Section 1.4.4.1.8 that:

> "Based on the analysis, the Poorman tailings impoundment structure can be designed as a safe and stable structure".

And:

> "The probability of catastrophic failure of the tailings impoundment is low."

In view of the fact that much work still needs to be performed in connection with the Poorman tailings facility (e.g., i) a preliminary site exploration program needs to be completed to confirm the suitability of the site; ii) the limited nature of site specific data; iii) the absence of any analysis of a impoundment failure; and iv) the indication from Klohn Crippen's reports that the impoundment would be high hazard), these statements in the DROD are simply not credible.

LPMC requests that the Objection Reviewing Officer mandate the completion of a preliminary site exploration program to determine the geotechnical suitability of the Poorman tailings impoundment site.

In view of the possibility of overtopping and breach of the impoundment dam, LPMC, with land located only 300 feet away, further requests that the Objection Reviewing Officer mandate the completion of a failure analysis **now** to quantify failure of the impoundment dam.

IV. Tailings Impoundment Seepage

LPMC made a number of comments in its December 15, 2011 SDEIS comment (contained in Section II of that comment) concerning seepage from the proposed Poorman tailings impoundment and how such seepage would damage LPMC's property located 300 feet east of the impoundment.

LPMC will not re-write these comments here and suggests the Objection Reviewing Officer review the comments concerning tailings impoundment seepage presented in Section II of LPMC's SDEIS comment.

Both the ERO Report and the 2009 Klohn Crippen Report identify and discuss the problems with controlling seepage from the impoundment. The proposed solution for this problem is a

proposed system of pumpback wells to be located along the toe of the impoundment dam. The ERO report and the 2009 Klohn report discuss how the pumpback system is not likely to capture all the seepage from the impoundment and that given the predominant groundwater flow downgradient to the east, the un-captured seepage would flow into LPMC lands. Any such seepage would degrade and damage adjacent LPMC land.

The Agencies responded to some of LPMC's concerns in Appendix M of the FEIS. In section 3779, 342-15 of Appendix M states:

> "All affected groundwater would be intercepted by the pumpback well system and treated before discharge from the Water Treatment Plant at the permitted outfall."

This response is entirely inconsistent with the views contained in the ERO Report and the 2009 Klohn Crippen Report which indicate that all seepage would **not** be intercepted and that it would flow downgradient into LPMC land (please refer to Section II of LPMC's SDEIS comment for citations).

In another response to LPMC's concern about seepage moving downgradient into LPMC land, Section 3965, 152-24 in Appendix M, the Agencies state:

> "The effectiveness of the pumpback system would be monitored and the system modified as necessary to insure that no tailings water reached Libby Creek."

This response completely misses the point of LPMC's comment which concerns seepage reaching adjacent LPMC land, not all the way to Libby Creek. The response does nothing to address the issue raised by LPMC.

In yet another response, also in connection with LPMC's concern about the impact on groundwater resources underlying its land resulting from the use of the pumpback well system , Section 3965 of Appendix M, 342-4, the Agencies state:

> "Section 3.11.4.4.4 of the FEIS described the mitigation of effects due to the use of pumpback wells below the tailings impoundment. Effects on Libby Creek flows would be mitigated by discharges of treated water from the Water Treatment Plant during and after mining."

LPMC's comment did not have anything to do with the effect of the pumpback wells "on Libby Creek flows". LPMC's comment had to do with potential damage to groundwater resources

underlying LPMC lands as a result of a statement on page 301 of the SDEIS that "Use of pumpback wells would also decrease groundwater levels". This was also a problem identified by Klohn Crippen in their 2009 Report. The Agencies' senseless response does nothing to address this issue.

Unfortunately, the pattern of non-responses by the Agencies to these issues raised by LPMC reflects a pervasive and blatant disregard for the impacts the Montanore Project would have on LPMC land. LPMC requests that the Objection Reviewing Officer mandate that the Agencies perform the analysis necessary to evaluate the impact to immediately adjacent LPMC land resulting from the use of the pumpback well system.

The problems with the use of the pumpback well system would be largely eliminated if the 2000 buffer that the Agencies should have applied to the Poorman tailings impoundment location was applied to this impoundment location.

V. Modification to Use NFS Road #231 as the Main Access Road

One of the biggest changes contained in the DROD concerns the modification allowing MMC to use NFS road #231 as the main mine access road (DROD, Section 1.4.1.2).

Throughout the SDEIS and DEIS process, it was represented that the NFS road, #278 would be used for mine access, with road #231 being used temporarily while road #278 was reconstructed. Thus, the only impacts from road #231 that were evaluated were its temporary impacts. The use of road #231 as the **main** mine access route represents a significant departure from the road access plan that has been previously presented, and creates the potential for significant impacts that have not been analyzed at all in the previous NEPA/MEPA documents.

As shown on Exhibit I, road #231 enters LPMC land near its northeast corner and then crosses Libby Creek just past the eight-mile mark. Thus, the section of road #231 that would be used for main mine access runs through LPMC land for a distance of approximately one (1) mile. Obviously, use of road #231 would have significant impact on LPMC land resulting from mine traffic, including increased traffic, dust, noise and other direct impacts from frequent heavy truck and equipment traffic.

Nowhere in the DROD or the FEIS is there any discussion of the overall impacts resulting from this change in road access and nowhere in the DROD or the FEIS is there any discussion of the impacts this change would have to LPMC land. As noted previously, NEPA and MEPA require the Agencies to evaluate every significant aspect of the environmental impacts or a proposed action, including the cumulative and connected impacts occurring on private or non-federal land. The Agencies have failed to do this with respect to the decision to now use road #231 for mine access.

Section 1.1.1.5.6 of the DROD describes the extensive road widening, bridge replacement and other related work that would be needed to upgrade road #231 for use during mine operations. Some of this work would need to be performed on rights of way through LPMC land. Section 1.1.1.5.6 describes how MMC would need to acquire new easements or secure modification of existing road easements on road #231. To date, neither MMC nor the Agencies have even approached LMPC about securing these easements. The Agencies should note that it is not likely that LPMC would be agreeable to granting any new easements or modifying existing easements to accommodate MMC. LPMC strongly suggests that the Agencies take this into consideration in connection with their decision concerning the use of road #231 and urge the Agencies that they reconsider using road #278, as originally proposed in the DEIS and SDEIS.

In any event, LPMC requests that the Objection Reviewing Officer require the Agencies to perform a supplemental environmental analysis under NEPA and MEPA of the impacts to LPMC land resulting from the use of road #231 as the main mine access route, prior to making finalizing the ROD.

VI. Sound

The FEIS discusses sound impact from the Montanore project in Section 3.20.4. It lists various sources of sound from vehicular traffic, pumps and associated equipment, and bulldozers during operations. Section 3.20.4 states that noise levels during the operations phase are predicted to be equal to 55 dBA within about 0.2 mile (1056 feet) of the tailings impoundment facility.

Klohn Crippen Berger prepared a risk assessment report on the Montanore project in 2009 (the "2009 Klohn Crippen Report"). This report identified a large number of risks associated with the Poorman tailings impoundment site (LPMC suggests the Objection Reviewing Officer refer to LPMC's December 15, 2011 SDEIS comments, Section II, for more detail). The 2009 Klohn Crippen Report concluded that the Poorman tailings facility overall has a higher level of risk associated with it relative to the Little Cherry impoundment facility.

One of the risks identified for the Poorman tailings facility concerned noise generated from tailings impoundment operations, particularly when cycloning of tailings was occurring (2009 Klohn Crippen Report, Section 5.3.1.3). Klohn Crippen predicted that noise from this source could lead to complaints from the local landowner (i.e., LPMC). Klohn Crippen believed that this was a serious enough risk that it could require a compensation arrangement as a risk management plan.

The Poorman tailings impoundment is proposed to be located 300 feet from LPMC land (FEIS, Attachment 1, Selected Alternatives, Section 1.1.2.5.1), not 1056 feet away. There is no discussion in the FEIS of the noise impact to LPMC from tailings operations 300 feet away.

While the FEIS mentions in Section 3.20.4 that noise at a level of 55dBA will be generated from tailings operations at a distance of 0.2 miles, it is clear that Klohn Crippen believed this would be a serious enough issue to list it in their list of Level 2 Risks (2009 Klohn Crippen Report, Table 5.3) and suggest a Risk Management Plan. This is not an inconsequential risk and is one that the FEIS does not sufficiently address. The FEIS needs to specifically address the noise impact from the cycloning of the tailings and other tailings impoundment operations to LPMC land. Applying the 2000 foot buffer that was applied to all other tailings impoundment locations that were considered would help mitigate sound impact to LPMC lands.

A further issue concerning sound from the Montanore project relates to the study prepared by Big Sky Acoustics, LLC ("Big Sky") in 2006 to evaluate sound impact from the Montanore project.

This study was actually prepared for an entirely different project layout than currently proposed. The project layout evaluated for sound impact by Big Sky was the project facility configuration proposed under the Noranda Minerals Corp. mining project where the plant site was to be located well up the Ramsey Creek drainage and the tailings impoundment located in the Little Cherry Creek drainage.

Under the current Montanore project proposal, a substantially different project facility layout is proposed (refer to Exhibit I), with the plant site sitting at the base of Shaw Mountain, west of the Recreational Panning area along Libby Creek, and the proposed impoundment site located in the Poorman Creek area. The sounds impacts from this different project layout will clearly not be the same as those for the former Noranda project layout. Thus, the use of the 2006 Big Sky Acoustics study has little bearing on the Montanore Project as now proposed.

LPMC requests that the Objection Reviewing Officer mandate an updated sound survey and analysis of the facility layout now proposed for the Montanore Project. This new sound analysis should include sound impacts to LPMC lands adjacent to the proposed plant site at the southwest corner of LPMC's land, from the use of road #231 as the main mine access route and from the proposed Poorman tailings facility adjacent to LPMC's northwest property boundary.

VII. Summary

Pursuant to the points presented and discussed above (and incorporating comments submitted by LPMC during the Scoping Phase, the DEIS and the SDEIS), LPMC objects to the FEIS and the DROD. LPMC is the party that would be most impacted by the Montanore Project due to the proximity of its lands to the project (refer to Exhibit I).

As discussed herein, LPMC does not believe that the Agencies have fully identified and evaluated every significant aspect of the environmental impacts of the Montanore Project to LPMC land. LPMC requests that the 2,000 foot buffer be applied to the Poorman impoundment

location as it was for every other impoundment location that the Agencies evaluated in the September 16, 2011 ERO Resources Corp. Final Tailings Disposal Alternatives Analysis report. The DROD and the FEIS fail to specifically address impacts to LPMC's senior water rights in Libby Creek and Ramsey Creek.

As discussed herein, LPMC does not believe that the Agencies have fully identified and evaluated every significant aspect of the environmental impacts of the Montanore Project to LPMC land. LPMC requests that the 2,000 foot buffer be applied to the Poorman impoundment location as it was for every other impoundment location that the Agencies evaluated in the September 16, 2011 ERO Resources Corp. Final Tailings Disposal Alternatives Analysis report. The DROD and the FEIS fail to specifically address impacts to LPMC's senior water rights in Libby Creek and Ramsey Creek.

The designation of NFS road #231 as the main mine access route is a major change relative to what was previously proposed in the DEIS and the SDEIS. The FEIS and the DROD do not address the specific impacts of this change to LPMC land.

The DROD and the FEIS fail to specifically address impacts to LPMC land resulting from seepage from the proposed Poorman tailings impoundment.

The DROD and FEIS fail to specifically address the risks to adjacent LPMC land associated with Poorman impoundment stability issues.

As discussed herein, LPMC does not believe that the Agencies have fully identified and evaluated every significant aspect of the environmental impacts of the Montanore Project to LPMC land. LPMC requests that the 2,000 foot buffer be applied to the Poorman impoundment location as it was for every other impoundment location that the Agencies evaluated in the September 16, 2011 ERO Resources Corp. Final Tailings Disposal Alternatives Analysis report. The DROD and the FEIS fail to specifically address impacts to LPMC's senior water rights in Libby Creek and Ramsey Creek.

The designation of NFS road #231 as the main mine access route is a major change relative to what was previously proposed in the DEIS and the SDEIS. The FEIS and the DROD do not address the specific impacts of this change to LPMC land.

The DROD and the FEIS fail to specifically address impacts to LPMC land resulting from seepage from the proposed Poorman tailings impoundment.

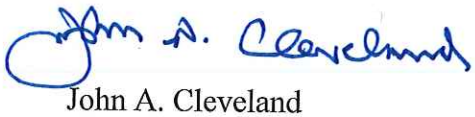
The DROD and FEIS fail to specifically address the risks to adjacent LPMC land associated with Poorman impoundment stability issues.

The DROD and the FEIS fail to specifically address impacts to LPMC land from sound from the Montanore Project.

It is quite possible that should the project proceed as now planned, that at some future point, LPMC may have actionable claims against the State for the impacts to its property caused by the Agency's decision.

Thank you for taking these comments into consideration.

Respectfully submitted,



John A. Cleveland
Libby Placer Mining Company

cc: David K. W. Wilson Jr. and Harley R. Harris, Morrison, Sherwood, Wilson & Deola
Tom Livers, Director, John North Chief Legal Counsel, Montana DEQ

Exhibit I

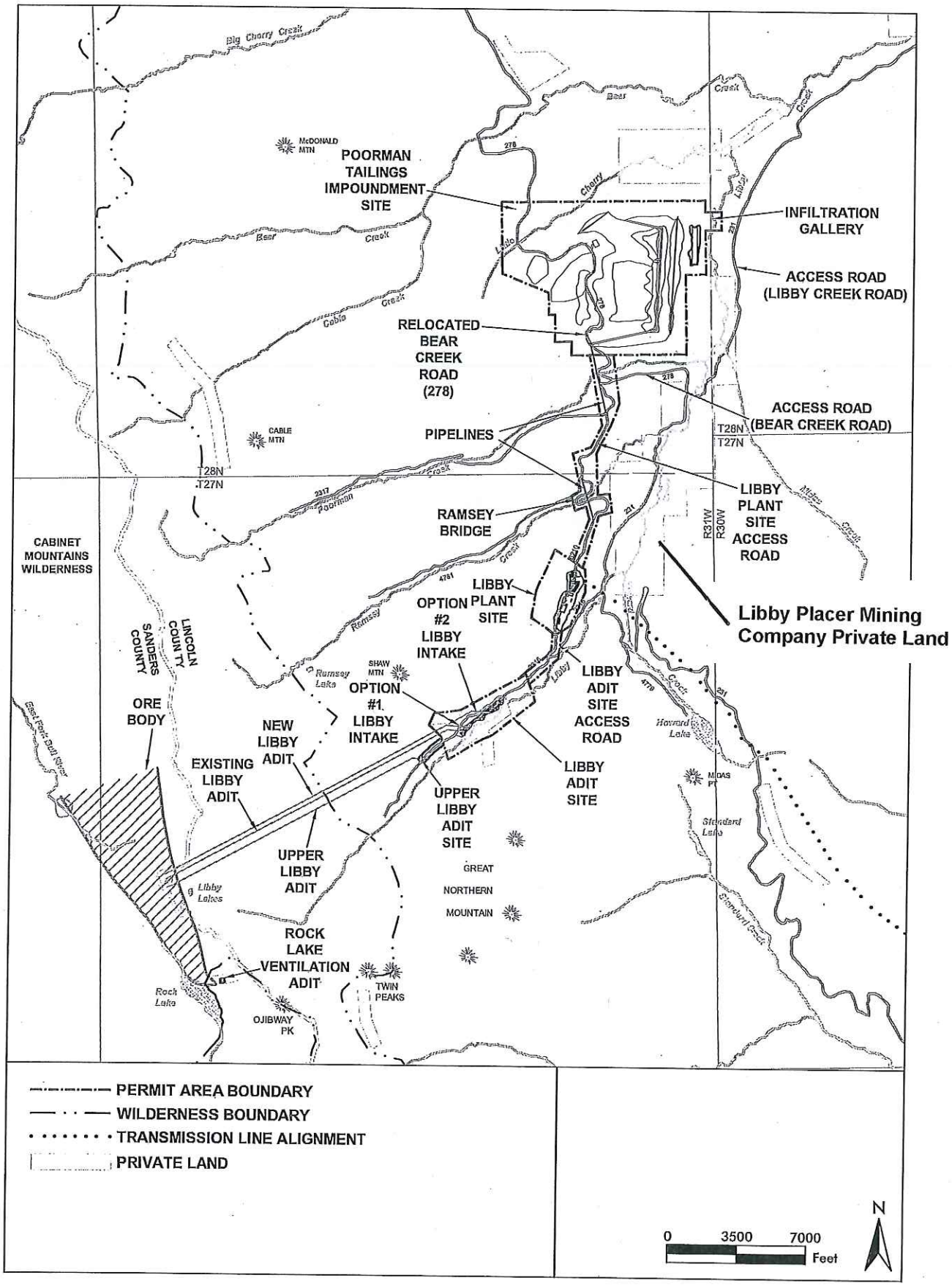


Figure 2. Selected Mine Alternative Facilities