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**Re: New Draft Environmental Impact Statement for the proposed Stibnite Gold Project**

On behalf of the undersigned local, state, and national conservation organizations, we write to urge the Forest Service to initiate a new Draft Environmental Impact Statement (DEIS) for the Stibnite Gold Project, a cyanide-leach gold mine proposed by Midas Gold Corp. on National Forest lands on the Payette National Forest and Boise National Forest in Idaho. A new DEIS is required for the following reasons:

- 1. In order to allow for the proper public and agency review under the National Environmental Policy Act (NEPA), a new DEIS is required when significant new information and operational changes occur after the publication of the DEIS.**

NEPA requires federal agencies to prepare an EIS for all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). This requirement serves a dual role: “It ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). NEPA's purpose is to ensure that “the agency will not act on incomplete information, only to regret its decision after it is too late to correct.” *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 371 (1989).

“In view of this purpose, an agency that has prepared an EIS cannot simply rest on the original document. The agency must be alert to new information that may alter the results of its original

environmental analysis, and continue to take a ‘hard look at the environmental effects of [its] planned action.’ *Friends of the Clearwater v. Dombeck*, 222 F. 3d 552, 557 (9th Cir. 2000) (quoting *Marsh*, 490 U.S. at 374). “If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion.” 40 C.F.R. §1502.9(a).

As shown below, the following significant new information was not previously and adequately considered by the agencies and thus must be fully reviewed in a new Draft EIS, subject to full public review under NEPA, the National Historic Preservation Act (“NHPA”) and other applicable federal laws.

**2. The mining company has submitted a revised plan of operations that constitutes a major change to the proposed action and significant new information relevant to environmental concerns.**

Our organizations have been actively engaged in the National Environmental Policy Act (NEPA) process for the proposed Stibnite Gold Project, based on a plan of operations submitted to the Forest Service by Midas Gold on September 2016.<sup>1</sup> The Draft Environmental Impact Statement (DEIS) public comment period culminated on October 28, 2020.<sup>2</sup>

It has come to our attention that Midas Gold has submitted a revised plan of operations to the Forest Service (MODPRO2) that was published on the Forest Service website on January 19, 2021,<sup>3</sup> after the comment period and without any public notice.

The revised plan of operations, which Midas Gold refers to as a “new alternative,” incorporates substantive changes to nearly every facet of the proposed mine, including the transportation route, transmission lines, waste management and disposal, water management, processing facilities, and reclamation and closure.<sup>4</sup>

Midas Gold also proposes to submit additional data and analyses to the Forest Service in support of its new plan that were not included in the DEIS and not subject to public review and comment, including:<sup>5</sup>

- Updated geological and mineral resource modeling;
- Detailed mine planning, including analysis of a smaller Hangar Flats pit and resulting alternative Development Rock Storage Facility configuration;
- Aquifer testing in the Meadow Creek valley and subsequent hydrogeologic modeling changes, including revised pit dewatering estimates;
- Revised geochemical characterization of development rock and ore, which included additional metallurgical testing to confirm geochemical characteristics of the resultant tailings;

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<sup>1</sup> [https://www.fs.usda.gov/nfs/11558/www/nepa/105403\\_FSPLT3\\_3909020.pdf](https://www.fs.usda.gov/nfs/11558/www/nepa/105403_FSPLT3_3909020.pdf)

<sup>2</sup> [https://www.fs.usda.gov/nfs/11558/www/nepa/105403\\_FSPLT3\\_5365799.pdf](https://www.fs.usda.gov/nfs/11558/www/nepa/105403_FSPLT3_5365799.pdf)

<sup>3</sup> [http://www.fs.usda.gov/nfs/11558/www/nepa/105403\\_FSPLT3\\_5576841.pdf](http://www.fs.usda.gov/nfs/11558/www/nepa/105403_FSPLT3_5576841.pdf)

<sup>4</sup> Midas Gold, Stibnite Gold Project, Refined Proposed Action ModPRO2, December 2020, Table A-1

<sup>5</sup> Midas Gold, Stibnite Gold Project, Refined Proposed Action ModPRO2, December 2020, p. 4.

- Updated site wide geochemical modeling for life-of-mine and post-closure, including predictive modeling of the proposed mine features and anticipated potential impacts to surface water and groundwater quality;
- Updated site wide, life-of-mine water balance modeling;
- Detailed water treatment scenario development;
- Life-of-mine and post-closure water temperature modeling; and
- Updated tailings tonnage and consolidation modeling.

The revised plan and additional data and analyses constitute a major change to the proposed action that will result in significant environmental impacts that were not evaluated in the EIS and new information relevant to environmental concerns that would result in significant environmental impacts not evaluated in the EIS. Relatedly, the public has not had the opportunity to comment on these major changes. In these circumstances, NEPA requires a new Draft EIS to be released for public comment.<sup>6</sup>

### **3. The initial DEIS for the Stibnite Gold Project plan of operations was already fundamentally flawed, with major gaps in data and analysis.**

Midas Gold has characterized the Stibnite Gold Project as a “restoration” project, yet the proposed mine plan will not result in “restoration” of the site, and should not be characterized as such. The proposed plan of operations will result in a substantially greater disturbance footprint than the original legacy pollution.<sup>7</sup> The initial Draft Environmental Impact Statement (DEIS) predicts significant and lasting harm to the environment from the proposed plan of operation (Alternative 2), including:

- The direct loss of or injury of 100,000 fish<sup>8</sup> and the net loss of up to 26% of critical habitat for Chinook Salmon and 28-70% of critical habitat for Bull Trout, even with mitigation;<sup>9</sup>
- A significant increase in water temperature, with temperature criteria violations predicted downstream of the project for several decades post-closure, post-closure, long term contamination of groundwater of unknown extent due to Yellow Pine pit backfill;<sup>10</sup>
- Groundwater pollution below the Hangar Flats and West End DRSFs [Development Rock Storage Facilities];
- The generation of mine water that will require active water treatment in perpetuity, and inadequate analysis to determine the effectiveness of passive and active water treatment to mitigate water quality impacts;<sup>11</sup>

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<sup>6</sup> 23 CFR § 771.130(a)(1)(2)

<sup>7</sup> USDA Forest Service, Stibnite Gold Project, Draft Environmental Impact Statement, August 2020.

<sup>8</sup> *Id.* Table 4.12-2b

<sup>9</sup> *Id.* P. 4.12-69.

<sup>10</sup> U.S. Environmental Protection Agency, Letter to Linda Jackson, Payette National Forest Supervisor, Comments on Stibnite Gold Project Draft EIS, November 18, 2020.

<sup>11</sup> U.S. Environmental Protection Agency, Letter to Linda Jackson, Payette National Forest Supervisor, Comments on Stibnite Gold Project Draft EIS, November 18, 2020.

- The use of the existing historical mine waste to build new waste facilities – spreading mine contamination across the site, with unknown effects;<sup>12</sup>
- The generation of 32 pounds of mercury emissions per year, with inadequate analysis to determine impacts.<sup>13</sup>

More importantly, the initial DEIS was fundamentally flawed because it contained major gaps in data and analysis that are required under NEPA. The DEIS acknowledges these gaps, with a lengthy list of incomplete or unavailable information that it deemed “relevant to reasonably foreseeable significant adverse impacts” (40 CFR §1502.22(b)(2)) and/or “essential to a reasoned choice among alternatives.”<sup>14</sup>

The list of missing information and analysis includes: a waste rock management plan, environmental legacy management plan (reclamation plan), an adequate water management plan, modeling data necessary to determine the project specific copper criteria for fish, among other information. The missing information is required under NEPA to provide the public, and decision-makers, with sufficient information to understand the adverse impacts and make a reasoned choice among alternatives.

The U.S. Environmental Policy Agency (EPA), which served as a cooperating agency, also identified major issues with the DEIS. The EPA expressed ongoing “significant concerns regarding potential impacts to water quality and aquatic resources,” and outlined major gaps in the data and analysis, including:<sup>15</sup>

- The need for additional analysis to support the effectiveness of proposed active and passive water treatment processes to mitigate anticipated water quality impacts;
- The need for improved analysis of potential impacts to surface water quality, particularly including impacts of mercury methylation and mercury deposition;
- Post-closure long-term contamination of groundwater of unknown extent due to Yellow Pine pit backfill;
- Lack of clarity and specificity regarding the antimony, arsenic, and mercury thresholds that would be utilized to ensure that reclamation cover materials are protective of human health and the environment; and
- A lack of information to support the effectiveness and long-term success of on-site mitigation for impacts to wetlands and aquatic resources.

The EPA also recommended the incorporation of additional alternatives and analyses, such as:

- Including mitigation and/or an alternative to mitigate the groundwater impact due to Yellow Pine Pit backfill. The current pit backfill plan includes some potentially acid generating (PAG) material being placed into the pit. Consider mitigation that would not allow PAG or metal leaching material to be disposed as backfill in the pit;

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* Table 4.1-1 p. 4.1-3 and 4.1-4.

<sup>15</sup> U.S. Environmental Protection Agency, Letter to Linda Jackson, Payette National Forest Supervisor, Comments on Stibnite Gold Project Draft EIS, November 18, 2020.

- Evaluating an alternative to backfilling such as creation of a pit lake at closure and long-term water treatment, as is proposed for the Hangar Flats pit under Alternative 2, if this would reduce groundwater impacts;
- Consideration of an alternative and/or mitigation to reduce groundwater impacts that would result from placing Spent Ore Disposal Area material in the Tailings Storage Facility embankment, such as improved collection and treatment of leachate from the Tailings Storage Facility embankment;
- Consideration of an alternative or alternative variant that utilizes only clean material for the embankment, such as an alternative that disposes Spent Ore Disposal Area material in the lined Tailings Storage Facility or in a lined repository within or adjacent to one of the Development Rock Storage Facilities.

**4. Midas Gold has entered into an Administrative Settlement Agreement and Order on Consent (ASAOC) for removal actions that fundamentally change the “no action” alternative by altering baseline conditions.**

The Forest Service and EPA signed an Administrative Settlement Agreement and Order on Consent (ASAOC) on January 15, 2021 with Midas Gold Corp. and its subsidiaries for removal actions at the Stibnite Mining District in Idaho. The ASAOC stipulates that the removal actions in Phase 1 are being conducted as time critical removal actions, and include the relocation of waste rock and tailings, with the objective of improving on-site water quality conditions before mining occurs (if permitted).<sup>16</sup> These removal actions fundamentally change the “no action” alternative, as described in the initial Draft EIS by altering baseline conditions, and the data and analyses based on those baseline conditions. An accurate baseline is “essential” for and informed analysis, 40 C.F.R. §1502.22, and necessary to “determine what effect the project will have on the environment.” *Great Basin Res. Watch v. BLM*, 44 F.3d 1095, 1101 (9th Cir. 2016).

For these reasons, a new Draft Environmental Impact Statement for the Stibnite Gold Project is necessary.

Sincerely,



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<sup>16</sup> ASAOC, p. 2, “This ASAOC establishes the framework to address certain areas in the Stibnite Mining District through an iterative, phased restoration approach, including securing removal actions that can occur before mining begins in the Stibnite Mining District.”



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