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Comments: Attached please find comments on the DEIS for Midas Gold, Inc.'s Stibnite Gold Mine project.

## I. Introduction

The American Exploration & Mining Association (AEMA) very much appreciates this opportunity to provide comments on the Draft Environmental Impact Statement (Draft EIS) that the Payette and Boise National Forests (Forest Service) published in August 2020 for Midas Gold Idaho Inc.'s (Midas Gold) proposed Stibnite Gold Project (SGP) in Valley County, Idaho. As discussed in detail in these comments, the many environmental and economic benefits associated with the SGP dictate that the Forest Service should approve this project as soon as possible.

Midas Gold's SGP Plan of Restoration and Operations (the PRO) presents the public with a unique opportunity to capitalize upon the environmental restoration measures that are an integral part of the Company's plans to redevelop this legacy mine site where mining dates back to the 1890s. Midas Gold is proposing to use private-sector resources to remediate what is currently a public problem. Idaho and the entire country are fortunate that Midas Gold is planning to undertake this visionary environmental restoration project and that the Forest Service has prepared a detailed Draft EIS to evaluate the Company's project proposal.

### A. AEMA's Qualifications to Provide These Comments

AEMA is a 125-year-old, 1,700-member national trade association representing the minerals industry with members residing in 44 U.S. states, seven Canadian provinces or territories, and ten other countries. Roughly 113 of our members live in Idaho. AEMA is the recognized national voice for exploration, the junior mining sector, and maintaining access to public lands. Our members work at projects that span the entire mining life cycle: exploration, development, operations, closure, and reclamation. Many of our members are small businesses like Midas Gold.

AEMA has been involved with Abandoned Mine Land (AML) issues for over two decades. We have been asked to testify in Congress on this issue several times and have been an active participant in numerous legislative dialogues dealing with Good Samaritan AML liability relief. Thanks to Midas Gold, the Stibnite site is not an AML in the conventional sense. However, as discussed below, were it not for Midas Gold's involvement with this site and the PRO, the Stibnite mine site would probably revert to AML status. Our longstanding involvement with AML issues gives us special appreciation for Midas Gold's PRO and makes us exceptionally well qualified to evaluate this project and provide the comments herein.

AEMA also has special expertise with the National Environmental Policy Act (NEPA) process. We've reviewed and commented on countless NEPA documents for proposed mining projects and mining-related rulemakings over the years and participated in the Council on Environmental Quality's (CEQ's) recently concluded rulemaking to update CEQ's NEPA regulations. Based on this experience, we would like to commend the Forest Service for developing a very thorough Draft EIS and making it readily available to the public on its project website. Based on our review of the Draft EIS, we believe it not only complies with the CEQ rules for preparing EIS documents but is more thorough in its analysis than many such documents.

## II. The PRO Addresses Legacy Environmental Problems Using Modern Environmental Protection Technologies

Midas Gold's PRO is specifically designed with numerous project features and activities that will remediate many of the environmental problems created by pre-regulation mining activities at Stibnite, some of which started more than 100 years ago. Many of the legacy mine features that are creating environmental problems date back to World War II and the Korean War when the federal government explored Stibnite for antimony and tungsten and helped fund mining operations for these metals that were needed for the war efforts. These historic, pre-regulation exploration and mining activities created mine waste piles that currently leach arsenic, antimony and other contaminants into the watershed, adversely affecting both surface water and groundwater resources. These environmental problems at Stibnite have gone largely unabated for decades, harming the public and the ecosystem [ndash] especially aquatic wildlife.

It is important to understand that the mining practices used in the 1890s, the 1940s, and the 1950s, and even those associated with the more recent mining activities at Stibnite in the 1970s [ndash] early 1990s timeframe, are no longer allowed today. Current federal and state environmental protection laws and regulations require mines to be designed, built, operated, closed, reclaimed, and maintained to protect the environment. These regulations mandate the use of proven environmental protection technologies like impermeable liners, waste management systems, and water treatment facilities.

Modern mine permits require the operator to perform operational and long-term site monitoring to verify the mine's environmental protection equipment is functioning properly, the operation is complying with all of its permits, and the environment is being protected. The modern environmental regulations that govern the PRO, the environmental protection measures included in the PRO and described in detail in Appendix D of the Draft EIS, the monitoring systems that will be in place at the site, and the financial assurance that will be provided to regulators to cover their costs to reclaim the site will produce a modern mining operation that will protect the environment. These regulatory and financial assurance requirements and the use of environmental protection technologies stands in marked contrast to the historic, unregulated mining operations at Stibnite that used mine waste disposal practices that are unlawful today and that were not reclaimed.

Redeveloping and restoring Stibnite is very expensive. In fact, Midas Gold is proposing to invest roughly \$1 billion of private-sector money in a new and highly regulated mining operation to provide the cash flow to undertake the restoration work. The public and environmental benefits that will result from the PRO are obvious and substantial. It should be emphasized that no other companies or governmental agencies have indicated they plan to, or have the resources to, step up to the plate and fix this site. In fact, in 2012 the U.S. Environmental Protection Agency (EPA) entered into a settlement agreement pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) with the potentially responsible federal agencies involved with the historical mining activities at the site committing not to pursue them for future site remediation.

Section 3.7.3.3 of the Draft EIS lists remedial actions that took place in the late 1990s and early 2000s that repaired some issues but left many un-remediated problems. Some of these actions were performed using taxpayer funding. These previous cleanup activities, which focused on specific problems, probably were constrained by available funding and thus could not address all of the legacy problems at the site. Although these site-specific focused activities may have solved important issues, they did not achieve a site-wide remediation. Because federal and state funding for environmental cleanups is scarce, it is likely that future taxpayer-funded remediation activities would be similarly limited in scope and could only target discrete components of the problem rather than cleaning up the entire site.

Instead of pursuing piecemeal remediation activities, Midas Gold's PRO is proposing to integrate site-wide and comprehensive restoration measures with redevelopment of the mine. In contrast to the limited restoration progress made in the past, the PRO represents a plan for the future that promises to restore the entire site and dramatically improve water quality and terrestrial and aquatic habitats that will create enduring benefits for the environment and the public. Additionally, this promise is guaranteed because the financial assurance that Midas Gold will have to provide to the Forest Service will include the costs for the agency to perform the restoration

components of the PRO if for some reason Midas Gold is unable to complete them. (See Section VI for a discussion of Financial Assurance.)

Because Midas Gold's PRO is the only identified way to achieve sustainable and site-wide environmental improvements at Stibnite in the foreseeable future, AEMA recommends that the Forest Service expedite completing the remainder of the NEPA process by preparing the Final EIS and issuing the Record of Decision (ROD) at the earliest possible date. Doing so will allow the public to capitalize upon this unique opportunity to solve the environmental problems at Stibnite in the near future, without the need for taxpayer funding. It is important to realize that without Midas Gold's PRO, there is a significant likelihood that the Stibnite mine site will return to its previous AML status with no identifiable party to remediate the legacy environmental problems. Without the restoration work in the PRO, the environmental problems at Stibnite will probably continue unabated for many decades.

The CEQ has designated the SGP as a High Priority Infrastructure Project<sup>1</sup> and created a permitting dashboard for this project. At a minimum, the Forest Service's evaluation of the SGP should proceed on a schedule that adheres to the CEQ's dashboard, which shows an estimated completion date of September 1, 2021 for the environmental review and permitting for this officially- designated important infrastructure project. The Forest Service should make every effort to comply with this timeline.

AEMA recognizes that the restoration measures outlined in the PRO are specifically designed to address the conditions at the Stibnite site and are not a template for other sites. However, the remediation concepts and principles that Midas Gold has proposed for the SGP may have applicability at other AML sites. The proposal to remove, reprocess, and re-purpose 10.5 million tons of legacy mine wastes in the Spent Ore Disposal Area (SODA), and to address tens of millions of tons of legacy waste rock around the open pits deserves special focus.

Midas Gold's proposal to remove, reprocess, and re-purpose the legacy mine waste pile at the SODA could be broadly termed "re-mining." Alternatives 1, 2, and 4 in the PRO entail reprocessing approximately 3 million tons of old tailings and reusing the remaining 7.5 million tons of spent leached ore to construct the tailings storage facility (TSF) embankment. This material will be encapsulated with development rock within the interior of the embankment under a liner cover, isolating it from the environment so it will no longer be a source of contaminated leachate. Although the planned removal and repurposing of this relatively minor volume of mine wastes is a small component of the overall SGP mine plan, it will yield outsized and important environmental benefits because it will eliminate the contamination emanating from this waste pile that has degraded the watershed for decades. Removal of legacy waste rock around the Yellow Pine and West End open pits will provide additional environmental restoration benefits.

The central role that this small re-mining element of the SGP will play in remediating water quality in the East Fork of the South Fork of the Salmon River (EFSFSR) is an important lesson from the SGP that has widespread applicability to other sites where legacy mine wastes are leaching contaminants and polluting surface water and groundwater resources. Based on AEMA's decades- long involvement with AML policy issues and legislative debates about Good Samaritan AML legislation, we have witnessed first-hand how mining opponents have mischaracterized re-mining as a "mining industry quick-profit scheme to make money from extracting metals from legacy mine wastes."

It is readily apparent that reprocessing the 3 million tons of legacy tailings in order to recover the residual metals from this material is a minuscule portion of the 100 million tons of ore that would be processed over the life of the mine. Clearly the metals recovered from the old tailings are not the economic driver for this project. Rather, mining and processing the 100 million tons of newly mined ore define the project economics that make it feasible to incorporate reprocessing the old tailings and picking up the old spent leached ore and using it to construct the TSF.

There is thus a key issue to be learned from Midas Gold's PRO regarding mining opponents' mischaracterization and ill-founded accusations about re-mining. As the SGP shows, reprocessing legacy mine wastes is an effective way to remove contaminant sources that may be possible if reprocessing can be integrated into a much larger mine plan to mine and process new ore. The small quantity of metals that will be recovered from reprocessing the 3 million tons of old tailings could never support or justify the \$1 billion investment that Midas Gold is proposing to make to redevelop and restore Stibnite. But reprocessing this small volume of material will have an enormous and enduring environmental benefit.

Unfortunately, many mining critics have used opposition to re-mining as an argument against Good Samaritan legislative proposals that include re-mining as an allowable action to cleanup an AML site. Their intransigent position that re-mining is a profit-making endeavor that should not be subject to Good Samaritan liability relief has obstructed constructive, fact-based dialogue and thwarted enactment of the Good Samaritan legislation that is so badly needed to help resolve the country's AML problem. Importantly, the SGP demonstrates that re-mining is an environmentally essential but economically trivial component of a much bigger mining and restoration effort.

AEMA notes that Midas Gold is not seeking Good Samaritan liability relief for the PRO and is proposing to comply with the water quality and other environmental standards applicable to all other mines. The Company's plans to clean up a legacy mine site without requesting future liability relief or lower environmental standards demonstrates unparalleled leadership and environmental stewardship.

There would be tremendous public benefits if the forward-focused commitment in the PRO to meet applicable water quality standards during and after operation of the SGP could represent a new approach to solving the AML problem that could become the foundation for future regulatory and policy dialogues applicable to cleaning up other legacy sites. Finally, Midas Gold's commitment to comply with relevant environmental standards is another important reason for the Forest Service to approve the SGP as soon as possible.

### III. Mining Law and the Forest Service's Surface Management Regulations

#### A. Ancillary Uses and Claim Validity

In proposing the PRO, Midas Gold is pursuing its rights under the U.S. Mining Law (30 U.S.C. Sections 21a et seq) to enter, occupy and use public lands open to mineral entry for mineral exploration and development. Pursuant to the statutory authority in the Forest Service's 1897 Organic Administration Act that calls for "[Idquo][hellip]provisions for the protection against destruction by fire and depredations,[rdquo]" the Forest Service promulgated surface management regulations at 36 CFR Part 228 Subpart A (228A regulations) that govern impacts from mining of locatable minerals governed by the Mining Law.

As correctly discussed in Section 1.4-1 of the Draft EIS, the 228A regulations apply to all mineral activities, "[Idquo]whether occurring within or outside the boundaries of a mining claim.[rdquo]" This statement reflects the definition of operations in Section 228.3(a):

"[Idquo]All functions, work, and activities in connection with prospecting, exploration, development, mining or processing of mineral resources and all uses reasonably incident thereto, including roads and other means of access on lands subject to the regulations in this part, regardless of whether said operations take place on or off mining claims.[rdquo]"

In evaluating Midas Gold's proposed use of National Forest System lands for mining at the SGP, the Forest Service's regulations and policies require verification that the project will meet the Section 228.8 environmental protection standard to "[Idquo]minimize adverse environmental impacts,[rdquo]" which applies to all

proposed project activities and facilities, regardless of whether the activities or facilities will be located on or off of mining claims or mill sites. Secondly, the Forest Service must also determine that the ancillary facilities in the PRO, whether on or off of claims or mill sites, are reasonably incident to the proposed exploration or mining operation. The Forest Service does not need to consider whether the claims or lands have a discovery of a valuable mineral deposit. The discovery status of a mining claim or lands open to location do not define the project proponent's rights to use mining claims and lands for mineral activities and facilities that minimize adverse environmental impacts and that are reasonably incident to a proposed mineral project. These rights apply to all mining claims and lands, regardless of whether they contain a mineral deposit.

The Forest Service's Surface Use Determination Handbook<sup>2</sup> defines the reasonably incident statutory standard in 30 U.S.C. [sect] 612(a) as meaning:

[Idquo][hellip]reasonable and necessary uses of National Forest System lands for purposes that reflect sound practices that avoid or minimize adverse environmental impacts and are required for the various stages of operations. For a use to be reasonably incident, the type and level of use must be appropriate to the stage of operations and extent of information on the mineral resource.[rdquo]

Forest Service Manual 28003 requires the agency to eliminate or prevent occupancy and activities that are not reasonably incident to and required for mineral operations. Based on AEMA's extensive expertise with the Mining Law, we believe the ancillary uses include in the PRO are clearly reasonably incident to the proposed mining and mineral processing operation. Finally, we note that the proposed use and occupancy of National Forest System Lands in the Payette and Boise National Forests are consistent with the August 17, 2020 Department of the Interior Solicitor's Opinion M-37057 [Idquo]Authorization of Reasonably Incident Mining Uses on Lands Open to Operation of the Mining Law of 1872.[rdquo]

#### B. The 228A Regulations Demand Compliance with Other Applicable Regulations

The Forest Service's need for action described in Section 1.4.1 of the Draft EIS is to enforce the following environmental protection mandates:

- \* Ensure that the selected alternative, where feasible, would minimize adverse environmental impacts on NFS surface resources;
- \* Ensure that, prior to approval, measures are included that provide for mitigation of environmental impacts and reclamation of the NFS surface disturbance; and
- \* Ensure that the selected alternative would comply with other applicable federal and state regulations.

The authority for these requirements is the Forest Service's 228A surface management regulations, which address all environmental media and resources and thus provide comprehensive environmental protection as shown in Table 1, which is modified from Appendix A of the PRO.

SEE LETTER SUBMISSION (Page 7 of 19): Table 1 Environmental Protection Requirements in the 228A Regulations.

An important aspect of the 228A regulations is the requirement that proposed mineral projects must comply with all other applicable federal and state regulations. This means that projects like the SGP must demonstrate they will comply with the water quality and air quality standards in state and federal laws, habitat protection mandates in the Endangered Species Act, waste management directives in the Resources Conservation and Recovery Act, etc. In this manner, the 228A regulations establish an overarching environmental compliance mandate that ensures mineral projects on National Forest System lands will fully protect all aspects of the environment. Given this regulatory framework, coupled with Midas Gold's environmental protection and enhancement commitment, AEMA is quite confident that the SGP will set an exemplary example of environmental stewardship.

#### IV. The 2008 Idaho Roadless Rule

AEMA is concerned that the Forest Service has included minimizing road construction and use in areas subject to the 2008 Idaho Roadless Rule (2008 IRR) as one of the criteria used to develop and analyze the configuration of the project roads in the various project alternatives. In fact, we believe it is inappropriate for the Forest Service to evaluate or consider this criterion in selecting the Agency's Preferred Alternative because the 2008 IRR is not applicable to roads used and needed to support mineral activities on lands open to mineral entry under the U. S. Mining Law.

In its October 16, 2008 Final Rule for 36 CFR Part 294 Special Areas; Roadless Area Conservation; Applicability to the National Forests in Idaho, Subpart C [ndash] Idaho Roadless Area Management<sup>4</sup>. The Forest Service clarified that the 2008 IRR does not apply to minerals activities pursuant to the U.S. Mining Law:

[ldquo]The final rule is clear that it does not regulate mining activities conducted pursuant to the General Mining Law of 1872. The Agency has separate requirements relating to road construction and maintenance for locatable minerals at 36 CFR 228.8(f) that adequately provide for these protections[hellip]Rights to reasonable access continue.[rdquo]

The rule at 36 CFR [sect] 294.25(b) states: [ldquo]Nothing in this subpart shall affect mining activities conducted pursuant to the General Mining Law of 1872.[rdquo] Because the 2008 IRR explicitly exempts mineral activities on lands open to location [ndash] like the National Forest System lands in the SGP area [ndash] the Forest Service cannot consider minimizing impacts to roadless areas designated in the 2008 IRR in its analysis of project alternatives and must not use impacts to roadless areas as a criterion in selecting the Agency's Preferred Alternative.

Additionally, the provisions for road construction, maintenance and closure enumerated in 36 CFR

[sect] 228.8(f) provide comprehensive environmental protection performance standards. As stated in the Forest Service's final rule, these regulatory requirements govern road use, construction, and maintenance for mineral projects located in areas that the 2008 IRR identifies as roadless areas. Therefore, the restrictions and prohibitions that apply to other activities are not necessary to protect the environment at mineral projects in 2008 IRR-designated roadless areas.

#### V. Alternatives Analysis

##### A. Sufficiency of the Alternatives Analyzed

Based on AEMA's extensive experience in reviewing and commenting on NEPA documents for mining projects and our review of the SGP Draft EIS, we believe the Draft EIS complies with the NEPA requirement to analyze reasonable alternatives. Both the 1978 CEQ NEPA regulations and CEQ's new NEPA regulations that became effective on September 24, 2020 establish requirements to evaluate a reasonable range of alternatives. CEQ's 40 Most Asked Questions About the NEPA Regulations<sup>5</sup> (40 Questions) includes the following guidelines regarding the Section 1502.14 alternatives analysis requirement:

[ldquo]Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is [ldquo]reasonable[rdquo] rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.[rdquo]

40 CFR [sect] 1502.14 of the newly promulgated 2020 NEPA regulations requires agencies to evaluate reasonable alternatives to the proposed action to enable comparisons between alternatives, to include appropriate mitigation measures not already included in the proposed action or alternatives, and to limit their consideration to a reasonable number of alternatives.

AEMA believes the Draft EIS complies with the alternatives analysis requirements in both the 1978 and 2020 NEPA regulations. The number of reasonable alternatives for mining projects located in rugged terrain like that at the SGP area is typically limited due to spatial constraints and engineering considerations that dictate the feasibility of alternative facility layouts. The lengthy list of potential alternatives discussed in Section 2.8 of the Draft EIS and described in detail in Appendix G to the PRO demonstrate that the Forest Service and Midas Gold looked at many alternatives for various components of the SGP.

For example, Appendix G to the PRO, which is available on the Forest Service's project website, includes a detailed and methodical discussion of the different project configurations that Midas Gold carefully evaluated before identifying the project layouts presented in Alternative 1 (the original PRO submitted in 2016) and an updated project layout (Alternative 2) that the Company developed in response to public comments received during public scoping. In performing this evaluation, Midas Gold used the Forest Service's own criteria to determine whether each alternative being considered would produce an environmental benefit and if the alternatives would be practical or feasible from technical and economic standpoints.

As explained in Section 8.2.1 of Appendix G to the PRO, Midas Gold considered different mining methods including underground mining and a combination of underground and surface mining. The evaluation presented in Section 8.2.1 clearly explains why underground mining is not technically or economically feasible and would pose substantial safety challenges. Moreover, underground mining of the currently identified mineral deposit would interfere with the proposed restoration and reclamation plans for the legacy mine features at the site.

AEMA understands from examining some of the public comments that have already been submitted for this project that some entities have expressed the opinion that the SGP should be developed as an underground mine. However, based on the discussion in Appendix G, it is readily apparent that underground mining of the known orebodies is impractical, unsafe, and uneconomic. As such, underground mining is not a reasonable alternative as defined in CEQ's NEPA regulations and 40 Questions because it is not "[p]ractical or feasible from the technical and economic standpoint." Therefore, the Forest Service did not need to evaluate underground mining in the Draft EIS as either an alternative considered or an alternative eliminated from further study (see Section 2.8 of the Draft EIS); nor does this alternative need to be evaluated in the Final EIS.

#### B. The Forest Service Should Select Alternative 2 as the Agency's Preferred Alternative

The alternatives analysis in the Draft EIS provides useful information in identifying the project alternative that best satisfies the Section 228.8 mandate to minimize adverse environmental impacts: "[a]ll operations shall be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest surface resources." Based on AEMA's review of the Draft EIS, it is readily apparent that Alternative 2 best satisfies this mandate. There are a number of environmental benefits and enhancements associated with Alternative 2 that are not included in the three other action alternatives. Examples of some of the Alternatives 2 environmental benefits and enhancements include the following:

\* The proposed location for the tailings storage facility (TSF) in the Meadow Creek valley where the old tailings and spent leached ore from previous mining are located would achieve significant environmental restoration. The public and the environment would benefit from the proposed use of this site for the TSF in light of the associated waste and contaminant source removal activities that are an integral component of the planned reuse of this previously disturbed and currently contaminated site;

- \* Alternative 2 explicitly includes an active water treatment facility that would help achieve water quality objectives. AEMA realizes that an active water treatment facility could be added to the other action alternatives;
- \* [bull] The addition of an on-site lime kiln to Alternative 2 would result in several environmental and safety benefits. First it would minimize traffic and reduce vehicular air emissions, including greenhouse gases. The elimination of lime delivery trucks and the resulting reduction in traffic would be a safety benefit. The on-site lime kiln would also eliminate the site surface disturbance acres associated with a development rock storage facility (DRSF) to store the unmineralized limestone/marble development rock that has to be mined from the West End pit in order to extract the ore. Also, if lime has to be procured from a vendor, the source of the limestone or marble that would have to be mined as feedstock for an off-site lime kiln would result in off-site surface disturbance impacts;
- \* The road network proposed in Alternative 2 appears to be most responsive to public comments reflecting local stakeholders[rsquo] travel patterns through the project area by providing seasonal access to Thunder Mountain through the mine site. AEMA commends Midas Gold for its efforts to work with local stakeholders to identify their concerns about maintaining the existing access through the site from the Stibnite Road to Thunder Mountain Road. To the extent stakeholders[rsquo] road requests can be safely and efficiently accomplished without interfering with operation of the project, the Agency[rsquo]s Preferred Alternative should incorporate local stakeholders[rsquo] preferences. AEMA thus suggests that the Forest Service select the transportation alternative that best accommodates comments from area stakeholders who are knowledgeable about how area residents travel through and in the vicinity of the project area;
- \* Another benefit of the Alternative 2 road layout is it minimizes travel routes that parallel area fish-bearing streams. By avoiding roads adjacent to area streams, the potential for sedimentation into the streams and adverse impacts to aquatic habitats would be reduced;
- \* Alternative 2 also has safety benefits because to the greatest extent possible, the Alternative 2 facilities layout avoids identified avalanche- and landslide-prone areas. This project configuration thus enhances safety during construction and operations and reduces public and worker safety hazards; and
- \* Lastly, Alternative 2 eliminates the West End DRSF by partially backfilling the Hanger Valley Pit with development rock mined from the West End pit, which reduces the overall project footprint. Reducing the project footprint is a meaningful way to minimize adverse environmental impacts consistent with the mandate in 36 CFR [sect] 228.8.

#### C. Reasons to Downgrade the Other Action Alternatives

- \* The Alternative 3 TSF location in the EFSFSR should be ruled out because it would fail to capitalize upon the synergies and opportunities associated with removing the old mine wastes in the Meadow Creek valley and building the TSF on previously disturbed lands.
- \* Another factor that should eliminate the Alternative 3 is that building the TSF in the EFSFSR would disturb a pristine area, have a larger footprint, and have a more negative impact on stream and wetland functional units;
- \* The large landslide along the southern side of the EFSFSR makes the Alternative 3 TSF location less desirable compared to the Alternative 2 location in the Meadow Creek valley from geotechnical and safety perspectives. Constructing the TSF could destabilize the base of this landslide, which increases risks compared to Alternative 2. Therefore, the geohazard associated with Alternative 3 should downgrade this location for the TSF from a technical risk perspective in accordance with CEQ guidelines;
- \* The road system proposed in Alternative 3 does not respond to public input regarding access through the site because there would be no public access roads through the mine site during mine operation.
- \* Both Alternatives 3 and 4 would delay project startup by at least two years due to the increased time required to complete site investigations and to construct the project roads. This two-year delay cannot be justified for corporate, public, and environmental reasons.

First, adding two years to the project construction timeline could adversely affect the project[rsquo]s economic viability, which would clearly harm Midas Gold. Because there are no compelling environmental advantages associated with either Alternatives 3 or 4, this delay would interfere with Midas Gold[rsquo]s Mining Law rights to



develop their claims and not align with CEQ's guidelines for considering alternatives. Although workers would be employed during the construction period, the mine operation jobs and the tax revenues associated with the operating mine would be deferred for two years, which would harm the public. Finally, some of the environmental benefits planned for the early stages of mine operation would be delayed, which would mean that the environmental problems associated with the legacy mining operation would remain unabated for an additional two years.

\* According to Section 4.7.7.2 and Table 4.7-3 of the Draft EIS, there is an increased risk of trucking accidents and spills associated with the Alternative 4 Yellow Pine Route because it has higher exposure to rock falls and landslides compared to the Burntlog Route proposed in the other action alternatives. Additionally, there are 12 identified avalanche paths along the Yellow Pine Route whereas there are no identified avalanche paths along the Burntlog Route. The Yellow Pine Route has increased proximity to major fish-bearing streams, which would increase the adverse consequences of a spill of hazardous substances into area streams compared to the Burntlog Route. The increased potential for traffic accidents, spills, and severity of spill impacts should rule out the Alternative 4 Yellow Pine Route.

\* Although Alternative 1 represents Midas Gold's original (2016) PRO, the Company's refinements to this plan, as reflected in Alternative 2, offer a number of environmental advantages compared to Alternative 1 and no adverse environmental impacts as compared to Alternative 1. The Alternative 2 addition of the on-site lime kiln produces environmental and safety benefits as discussed above. Additionally, Alternative 1 has a bigger footprint and creates more overall surface disturbance (3,533 acres for Alternative 1 versus 3,423 acres for Alternative 2 as shown in Tables C-1 and C-2 respectively of the Draft EIS). Eliminating the West Pit DRSF and partial backfilling of the Hanger Flats Pit in Alternative 2 account for most of the reduced project footprint. The Forest Service should not select Alternative 1 as the Agency Preferred Alternative because it does not maximize avoidance of environmental impacts and thus is not the best way to satisfy the 36 CFR 228.8 mandate to minimize environmental impacts compared to Alternative 2.

#### D. The No Action Alternative Analysis is Incomplete, Not Selectable, and Would Perpetuate Environmental Harm

AEMA is accustomed to seeing pro forma discussions of the No Action Alternative in EIS documents prepared for proposed mining projects on National Forest System lands and on BLM-administered lands. Typically, these discussions briefly describe the status quo and explain that the Forest Service or BLM do not have the discretionary authority to categorically disapprove a mining project that is governed by the Mining Law because doing so would violate the project proponent's Mining Law rights.

Certainly, these rights are applicable to the SGP and Midas Gold's rights under the U.S. Mining Law to develop its mining claims. However, we notice that a discussion of these rights and the

Forest Service's limited discretionary authority to wholesale reject a proposed mining project is missing from Section 2.7. The Forest Service should explain the statutory and constitutional limits to its authority when reviewing a Plan of Operations for a proposed mining project on National Forest System lands open to mineral entry under the U.S. Mining Law. Section 2.5.1, Forest Service Decisions, and Section 2.7, Alternative 5 [ndash] No Action, should clarify that pursuant to 36 CFR [sect] 228.8, the Forest Service must impose reasonable conditions to protect surface resources on National Forest System lands, but cannot categorically prohibit mining or materially interfere with Midas Gold's proposed activities that are reasonably necessary under the U.S. Mining Law and that comply with other federal and state applicable laws and regulations.

The perfunctory discussion in Section 2.7 of the status quo environmental conditions that would persist under the No Action Alternative is typical for most mining EIS documents. However, it is insufficient detail for the SGP Draft EIS. The cursory statement in Section 2.7: [ldquo]Additionally, there would be no removal and/or relocation of legacy materials (tailings and waste rock), backfilling of the Yellow Pine pit, rebuilding of the EFSFSR, or re-

establishing fish passage to the headwaters of the EFSFSR, [rdquo] does not adequately describe the environmental consequences that would result from selecting the No Action Alternative.

Section 2.7 should more fully explain that the adverse impacts to the public, the fishery, and the environment from legacy mining wastes would persist for the foreseeable future under the No Action Alternative. AEMA believes it is very important for the public to be fully informed that the No Action Alternative to maintain the status quo represents a missed opportunity to capitalize upon Midas Gold's proposal to use private-sector resources to improve a public environmental problem.

The Final EIS should provide specific information about the long-term environmental consequences of doing nothing to restore the Stibnite site, which would occur under the No Action Alternative. For example, the Final EIS should provide an estimate of the amount of time it would take for the Yellow Pine pit to fill up with sediment due to the yearly influx of sediment into the pit from Blowout Creek during spring melt conditions, and how that would continue to block upstream fish migration and ultimately impede and potentially eliminate downstream fish migration. The Final EIS should explicitly state that under the No Action Alternative, Idaho Tribes with rights and interests in the land and access to the EFSFSR fishery would continue to be harmed due to further degradation of the fishery. The No Action Alternative should also quantify the contaminants that would continue to leach from the legacy mine waste pile in the Meadow Creek valley and how ongoing and unabated contamination of the watershed would impact public health and the environment.

As discussed above, the Forest Service cannot interfere with Midas Gold's statutory rights to develop its mining claims and thus cannot select the No Action Alternative as the Agency's Preferred Alternative. Additionally, the environmental improvement opportunities that would be sacrificed under the No Action Alternative are another reason why the Forest Service must not select this alternative.

#### E. Other Project Alternatives in Response to Comments on the Draft EIS

AEMA commends Midas Gold for continuing to refine its project proposal as reflected in the environmental enhancements in Alternative 2, the Modified PRO, compared to the original, 2016

PRO described in Alternative 1. Similarly, we applaud the Forest Service for analyzing the Modified PRO as Alternative 2. AEMA suggests that Midas Gold and the Forest Service continue to work together to identify additional environmental or operational improvements that have the potential to reduce project impacts or costs based on their own respective analyses as well as comments received from the public during the comment period on the Draft EIS. For example, are there project modifications that could further reduce the project footprint, project emissions, or long-term visual impacts? Could the reclamation plan be improved or modified in ways that would reduce the need for long-term care and maintenance? If any feasible project modifications or other improvements are identified, the Forest Service could add them as mitigation measures in the Agency's Preferred Alternative in the Final EIS pursuant to Section 1502.14(e) of the CEQ regulations implementing NEPA. Public comments received on the Draft EIS might also identify project enhancements that might be feasible to incorporate into the Agency's Preferred Alternative as mitigation measures that reduce project impacts.

#### VI. Financial Assurance

As accurately described in the Forest Service's statement on Page 2-75 in the Draft EIS, Midas Gold will have to provide sufficient financial assurance (reclamation bonding) to guarantee the agency would have the necessary funds to reclaim the site, including the costs of any necessary long-term management:

[ldquo]As part of the approval of a plan of operations for the SGP, the PNF Forest Supervisor would require Midas Gold to post financial assurance to ensure that NFS lands and resources involved with the mining

operation are reclaimed in accordance with the approved plan of operations and reclamation requirements (36 CFR 228.8 and 228.13). This financial assurance would provide adequate funding to allow the Forest Service to complete reclamation and post closure operation, including continuation of any post closure active or passive water treatment, maintenance activities, and necessary monitoring for as long as required to return the site to a stable and acceptable condition. The amount of financial assurance would be determined by the Forest Service and would [ldquo]address all Forest Service costs that would be incurred in taking over operations because of operator default. (Forest Service 2004).[rdquo]

AEMA has extensive experience with the federal and state financial assurance requirements for the hardrock mining industry that are applicable to projects like SGP. AEMA participated in EPA[rsquo]s CERCLA 108(b) rulemaking in 2016 as a Small Entity Representative in the Small Business Advocacy Review (SBAR) Panel that the EPA had to convene to comply with the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the Regulatory Flexibility Act. AEMA also submitted extensive comments on EPA[rsquo]s proposed rule. We are thus very well qualified to present the following discussion.

During the SBAR Panel process, the Forest Service provided a detailed PowerPoint presentation on the agency[rsquo]s financial assurance requirements that demonstrated that these requirements are an enforceable regulatory mechanism that effectively address the 13 response cost categories in EPA[rsquo]s proposed rule. This PowerPoint presented how the Forest Service determines the amount of required financial assurance and, as an example, used detailed information about how the financial assurance requirement for the Greens Creek Mine in Alaska was calculated with the

Standardized Reclamation Cost Estimator (SRCE) software tool. As part of this presentation, the Forest Service characterized the advantages of using the SRCE because of the [ldquo]transparency of unit costs, reproducibility of calculations, and capability of being easily updated.[rdquo] It is AEMA[rsquo]s understanding that Midas Gold, the Forest Service, and the Idaho Department of Lands (IDL) are planning to use the SRCE to calculate how much financial assurance Midas Gold will have to provide for the SGP before the Company can commence mining.

EPA concluded the CERCLA 108(b) rulemaking in February 2018 when it published the final rulemaking in the Federal Register<sup>6</sup>, which concluded:

[ldquo]EPA has determined that modern regulation of hardrock mining facilities[hellip]reduces the risk of federally financed response actions to a low level such that no additional financial responsibility requirements for this industry are appropriate[hellip]the hardrock mining industry does not present a level of risk of taxpayer funded response actions that warrant imposition of [additional EPA] financial responsibility requirements for this sector.[rdquo]

The Deputy Chief of the National Forest System provided detailed comments to EPA in response to EPA[rsquo]s proposed CERCLA 108(b) rule<sup>7</sup>. The following excerpts from the Forest Service[rsquo]s comments to EPA amplify the discussion on Page 2-75 of the Draft EIS:

[ldquo]The Forest Service regulations at 36 CFR [sect]228 already direct mineral operators to minimize effects on the environment, thus preventing or minimizing the likelihood for the need of a CERCLA response action, and requires FA (Financial Assurance) to assure not only compliance with operating procedures set forth in the approved plan, but all reasonably foreseeable costs of compliance with applicable environmental laws and standards.

The Forest Service identifies appropriate engineering controls for closure before they become necessary in the approved plan of operations, and collects adequate funds via the reclamation bond to ensure that these controls are in place and that the site is appropriately reclaimed in the event that the owner/operator is unable or unwilling

to do so.

The site administration during operations, and reclamation bonds and long term funds held by the Forest Service ensures that these engineering controls are put in place during mining activity, and properly secured during closure even if the operator declares bankruptcy or is otherwise unable to perform proper closure activities to ensure environmental protection.

Additionally, Forest Service regulations at (CFR [sect] 228.4(e)) allow the agency to require a modification to the Plan of Operations and reclamation plan and to allow for bond adjustments to address unforeseen environmental effects. In this way, risks are administratively minimized while a mine is in operation

The operating plan approved by the Forest Service is designed to ensure compliance with all environmental laws and prevent releases, and the bond required by the Forest Service is sufficient to insure compliance with that plan. The Forest Service bond calculations include allowances for reasonably foreseeable contingencies.[rdquo]

Based on our experience, AEMA is quite confident that the amount of necessary financial assurance that the Forest Service and IDL will determine for the SGP will be comprehensive, will take into account all likely contingencies, and will include a separate long-term financial instrument like a trust fund if the agencies identify the need for long-term financial assurance. The financial assurance amount will be based on the agencies[rsquo] costs to implement, manage, and complete reclamation and to perform long-term monitoring, inspection, and maintenance. If the agencies determine long-term financial assurance is necessary, the long-term financial assurance instrument can be structured to provide funds in perpetuity for activities like operating and maintaining a water treatment facility, care and maintenance of project infrastructure, or maintaining and repairing the TSF embankment

Finally, we add that it is typical for the public to demand information about the dollar amount of the required financial assurance during the NEPA process. Although this request is understandable, it reflects a lack of understanding of this process and how federal agencies use the NEPA analysis as a decisionmaking tool to identify the Agency[rsquo]s Preferred Alternative. It is premature to calculate a reclamation cost estimate prior to selecting the Agency[rsquo]s Preferred Alternative. The financial assurance cost calculation comes later in the process, after the Agency has identified its Preferred Alternative and issued its Record of Decision approving the project.

## VII. New Critical Minerals Executive Order

On September 30, 2020, President Trump issued Executive Order (EO) 13953 entitled [ldquo]Addressing the Threat to the Domestic Supply Chain from Reliance on Critical Minerals from Foreign Adversaries[rdquo] that has important implications for the SGP. Antimony, which the USGS identified as a critical mineral<sup>8</sup>, will be produced as a by-product of the gold production at the SGP. This EO characterizes the country[rsquo]s dependence on the People[rsquo]s Republic of China for multiple critical minerals as [ldquo]particularly concerning.[rdquo] Antimony is an example of a critical mineral that the U.S. mainly obtains from China. According to the USGS[rsquo] 2020 Mineral Commodity Summaries<sup>9</sup>, the U.S. imported 86 percent of the antimony we used in 2019. Most of this imported antimony came from China and Russia. Recycling satisfied the remaining 14 percent of the country[rsquo]s antimony consumption.

In the EO, President Trump states:

[ldquo][hellip]determine that our Nation[rsquo]s undue reliance on critical minerals[hellip]from foreign adversaries constitutes an unusual and extraordinary threat[hellip]to the national security, foreign policy, and economy of the United States. I hereby declare a national emergency to deal with that threat.[rdquo]

To address this national emergency the President issued the following directives:

[The Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, the Secretary of the Army (acting through the Assistant Secretary of the Army for Civil Works), and the heads of all other relevant agencies shall, as appropriate and consistent with applicable law, use all available authorities to accelerate the issuance of permits and the completion of projects in connection with expanding and protecting the domestic supply chain for minerals. (EO, Sec. 5.)

The Secretary of the Interior, the Secretary of Energy, and the Administrator of the Environmental Protection Agency shall examine all available authorities of their respective agencies and identify any such authorities that could be used to accelerate and encourage the development and reuse of historic coal waste areas, material on historic mining sites, and abandoned mining sites for the recovery of critical minerals. (EO, Sec. 6.).

The SGP is a significant and important opportunity to develop domestic antimony production, which would reduce the country's reliance on China for this critical mineral. Accelerated review and approval of the SGP is now required pursuant to the President's new Critical Minerals EO. Moreover, Midas Gold's proposal to reprocess and repurpose the 10.5 million tons of legacy tailings and spent leached ore in the Meadow Creek valley is exactly the type of activity that the EO singles out by directing federal agencies to accelerate and encourage the development and reuse of material on historic mine sites.

In light of this new EO, the Forest Service and the U.S. Army Corps of Engineers, in its role as a cooperating federal agency, must do everything possible to conclude the NEPA process as quickly as possible and authorize the SGP. At a minimum, the agencies should strive to meet the September 1, 2021 permitting completion deadline specified in CEQ's dashboard for the SGP.

#### VIII. A 75-Day Comment Period is Sufficient - There Should be No Additional Extensions

AEMA believes the Forest Service's decision to grant another 15-day extension to the public comment period for the Draft EIS was reasonable, but not necessary given the extensive public disclosure on the project over many years. However, we strongly urge the Forest Service to make that the final extension; additional extension requests should not be granted. In agreeing to a 75-day comment period, the Forest Service has already gone above and beyond its regulations, which establish a 45-day public comment period for a Draft EIS, as well as exceeding the 45-day review timeframe specified in the CEQ's new NEPA regulation at 40 CFR [sect] 1506.11(d).

Adding 30 days to the 45-day standard review timeframe gives the public enough time to review the document and attend the virtual public meeting. AEMA believes the Forest Service's project website at <https://www.fs.usda.gov/project/?project=50516> does an excellent job of making the Draft EIS and associated documents readily available to the public. Having all of the relevant project documents including Midas Gold's PRO, the results of the Forest Service's scoping comment period, the DEIS, and the extensive list of references cited in the DEIS in one place is efficient and convenient.

AEMA is quite impressed with the Forest Service's virtual public meeting at <https://stibnite.consultation.ai>. This virtual meeting provides the public with a valuable tool for understanding the project and the alternatives analyzed in the DEIS. We enjoyed using the alternatives story map and the interactive maps for the four action alternatives and felt like we have a good understanding of the Proposed Action and the project alternatives thanks to the virtual meeting and the Draft EIS website.

Additionally, we note that the virtual meeting format truly levels the playing field for all stakeholders because it provides 24/7 accessibility to project information. Under normal (i.e. non- COVID 19) circumstances, most of AEMA's members probably would not have been able to make the time or incur the travel expenses to

attend an in-person meeting during the public comment period. Thus, there are some real advantages to having a virtual public meeting that is available to anyone anywhere throughout the 75-day comment period.

We suggest that the Forest Service start using virtual public meetings for other NEPA projects because of the superior accessibility and availability of virtual meetings compared to in-person meetings. Once the pandemic is in our rearview mirrors and it is safe to convene in-person meetings, the Forest Service would have the option of holding in-person meetings near the project area and also offer the public the opportunity to participate in a virtual meeting throughout the duration of the public comment period.

## IX. Conclusions

Midas Gold's proposed SGP is a visionary plan that integrates environmental restoration of a site degraded by over 100 years of pre-regulation mining activities with a modern, state-of-the-art mining project that will protect the environment during and after operations. The environmental and socioeconomic benefits of this project are numerous, meaningful, and enduring. Both Midas Gold and the Forest Service should be commended for the work and coordination that both entities have devoted to date to this project.

The Forest Service's Draft EIS clearly satisfies NEPA requirements as established in the CEQ's NEPA regulations at 40 CFR [sect] 1500 - 1508. Chapter 2 of the Draft EIS does a thorough job analyzing the technically and economically feasible project alternatives. The document and associated references present a comprehensive discussion of the existing environment (Chapter 3). The environmental consequences evaluation in Chapter 4 is very comprehensive. The consultation, public involvement, and coordination that the Forest Service undertook to prepare the Draft EIS is substantial as described in Chapters 5. The long list in Section 6.2 of document recipients and entities notified is truly impressive. Finally, the large number of references cited in Chapter 8 demonstrates the tremendous amount of site-specific data collected, studies performed, and detailed analysis that have been incorporated into the Draft EIS. On the basis of this exhaustive amount of information, it is clear that the environment at the SGP has been thoroughly studied and is well understood.

The Forest Service, working with Midas Gold, might identify some project refinements and enhancements from the public comments being filed on the Draft EIS. Incorporating improvements that are economically and technical feasible and that meet the Forest Service's and Midas Gold's Purpose and Need would be consistent with both NEPA and the mandate in the Forest Service's surface management regulations at 36 CFR [sect] 228.8 regulations to minimize adverse environmental impacts. The Forest Service could add these improvements as mitigation measures in conjunction with identifying the Agency's Preferred Alternative, pursuant to the NEPA regulations at 40 CFR [sect] 1502.14(e).

AEMA strongly urges the Forest Service to complete the permitting process for the SGP quickly so the economic and environmental benefits of this project can start as soon as possible. We believe compliance with the President's new EO on Critical Minerals and the CEQ's High Priority Infrastructure Project permitting dashboard for this project direct the Forest Service to complete the permitting process on an expedited basis.

AEMA appreciates the opportunity to submit these comments on the Draft EIS for the SGP. Please do not hesitate to contact me if you have any questions about our comments.

1 <https://www.permits.performance.gov/permitting-project/stibnite-gold-project>

2 Forest Service Handbook 2809.15, Chapter 10, effective date 08/31/2006.

3 Forest Service Manual 2800 [ndash] Minerals and Geology, Section 2802: Objectives, Page 9.

4 Federal Register Vol. 73, No. 201, pp. 61456 [ndash] 61496, see pp. 61469, 61481

5 46 Fed. Reg. 18026 (March 23, 1981) As amended (1986), available at:  
<https://www.energy.gov/sites/prod/files/2018/06/f53/G-CEQ-40Questions.pdf>

6 Federal Register Vol. 83, No. 35, February 21, 2018, pp. 7556 [ndash] 7588

7 Ibid. at pp. 7567, 7571, 7572, 7579,

8 <https://www.federalregister.gov/documents/2018/05/18/2018-10667/final-list-of-critical-minerals-2018>

9 <https://pubs.er.usgs.gov/publication/mcs2020>