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Comments on Stibnite Gold Project EIS #50516: Public Comment Category [Idquo]Unique Letter[rdquo]

I have lived in McCall intermittently since 1981, and I have been a property owner and tax payer here since the late 1980s. I own a duplex at 295 Rio Vista Blvd. I was a smokejumper at the McCall base for twenty years and have brought my wife and three boys here every year for summers and winter breaks. The Midas project would devastate the natural areas and ruin the attributes that makes McCall the remarkable place it is for bringing up families and for tourist recreation.

I write to point out some breathtaking legal deficiencies of the Draft EIS for the Midas project. I hereby incorporate the objections and supporting scientific, legal and policy analysis and other information detailed in a joint letter submitted by Save the South Fork Salmon, Idaho Conservation League, and other non-profit organizations (hereafter Joint Letter). I request that the Forest Service provide specific comments in response to this letter as it falls in the public comment category of [Idquo]unique letter.[rdquo] I request that the Forest Service 1) undertake analysis to remedy its many deficiencies under NEPA; 2) commence a vigorous internal audit of inappropriate bias in favor of Midas Corp., an audit conducted by the USDA[rsquo]s Office of Inspector General; and 3) conduct a thorough analysis of whether approval of this project violates the Forest Service[rsquo]s singular and unique duties under the public trust principle to protect crucial natural resources for the benefit of present and future generations.

My objections fall into three categories: 1) insufficiency of analysis under NEPA; 2) inappropriate delegation of the NEPA responsibility to the project proponent, creating inherent bias in the analysis; 3) violation of the public trust principle. Because the inadequacies of the DEIS are so extensive, I ask the Forest Service to extend the public comment period to a full 120 days. It is ludicrous to expect the public to fully analyze such a flawed document within the time provided so far.

Insufficient and inadequate analysis under NEPA

I hereby incorporate the points raised in the Joint Letter. The DEIS fails to provide rational analysis of the impacts of the project on vital natural resources including fisheries, air, waters, soils, forests, soils, and wetlands. It utterly fails to present a climate impacts analysis, much less touch upon the emerging science that shows that society must decarbonize rapidly and achieve 45% emissions reduction within the next 10 years- or push the planet into runaway heating. With climate tipping points proximate and on the near horizon, further carbon emissions from a project of this magnitude represent direct, indirect, or at the very least, cumulative impacts that must be addressed. In addition, the DEIS has failed to carry out environmental justice analysis (required by a longstanding executive order) with respect to the tribes[rsquo] reliance on the natural resources that would be destroyed or impaired. The Forest Service further failed to develop a robust [Idquo]no action[rdquo] alternative paired with a restoration strategy. On all of these grounds, the DEIS is deficient and must be corrected and resubmitted for public comment.

Inappropriate delegation of the NEPA responsibility to Midas Corp.

Throughout the NEPA process, the Forest Service has inappropriately allowed Midas Corp to undertake the environmental analysis and inform the public. While this may be an entrenched practice in the federal government, it violates the spirit, purpose, and letter of NEPA. The EIS must inform the government[rsquo]s

decision whether to allow this project to go forward. An EIS is not intended as an advocacy piece developed by the proponent or its consultants. Developing the EIS is singularly the Forest Service's responsibility. Allowing the private project proponent (or its consultants) any significant role in the process introduces inherent bias that infects the final analysis in a systemic fashion and irreparably taints the decision-making process. The remedy for this is to set the DEIS aside while the Inspector General conducts a process investigation to both identify the points of influence and set a corrective strategy for a renewed NEPA process. I also submit that the Forest Service engaged in impermissible post-hoc rationalization in issuing its DEIS. NEPA forbids an agency from making a decision on the project prior to the full completion of all environmental analysis and full consideration of such analysis. The totality of website information, documents, and informal conversations between citizens and the Forest Service clearly point to the Forest Service's pre-made decision to approve this project and to use the NEPA process, in alliance with Midas Corp., to justify the decision. In short, the Forest Service has already made its decision to approve this project. Such premature decision-making violates the most basic rule of NEPA prohibiting the agencies from deciding the matter prior to the full completion of NEPA's process. I request a full investigation of the Inspector General into this aspect of the Forest Service's process.

Violation of the Public Trust Principle

It is undisputed that federal forest lands are held in public trust. The U.S. Forest Service, as trustee, must manage these lands for the exclusive benefit of present and future generations of citizens, who are the sole beneficiaries of the public trust. The whole purpose of the trust is to harness the otherwise vast power of government and direct it for the benefit of the people, rather than for the political allies of those who may be sitting in government and holding this immense power. A trust imposes a rigorous set of fiduciary obligations, both procedural and substantive in nature. These are separate and apart from statutory obligations and have constitutional underpinnings. *Illinois Cent. R.R. v. Illinois*, 146 U.S. 387, 453 (1892).

While separate, the duties must be fulfilled as part of the NEPA process. The Forest Service has violated multiple duties under the public trust. Above all, the Forest Service has never even assessed what public trust duties apply in this context. It must do an assessment and full evaluation prior to making the final decision whether or not to approve this project.

Duty of loyalty to the public and duty not to make decisions for the primary benefit of a private party

The whole purpose of the public trust principle is to make government work for the people, who after all, give all governmental officials their authority. The duty reaches its pinnacle in the context of natural resources that are crucial to a region. Fish, waters, wildlife, forests, the airshed, and public lands are all public trust assets and vulnerable to devastation by this project. The trustee's duty is to make decisions to benefit the public. Caselaw makes clear that a public trustee may not make decisions for the primary benefit of a private party. *Lake Michigan Fed'n. v. U.S. Army Corps of Engineers*, 742 F.Supp. 441, 446 (N.D. Ill. 1990). Yet the entirety of the NEPA analysis makes clear that the Forest Service is positioned to do just that if it approves the Midas mine. It fails to state how the public can benefit. Indeed the gold produced does not go to the U.S. (nor the antimony, the production of which is speculative at best). The public trust interests of fishing, recreation, aesthetics, and biodiversity would be irreparably harmed to provide profits to a private corporation seeking to exploit public-owned resources [ndash] the exact opposite of what the public trust requires. The Forest Service's overriding, unapologetic justification for this project is to benefit Midas Corp. in patent violation of the public trust requirement to not make decisions for the primary benefit of a private party. It is unclear why the Forest Service seems to support this project over the interests of the public, but it is quite possible that the political appointees of the Forest Service are biased for political reasons to favor Midas. I ask for an internal audit by the Inspector General to determine whether the fundamental duty of loyalty to the public has been compromised.

Duty Against Substantial Impairment

The most basic substantive duty of a public trustee is to prevent substantial impairment to the trust resources, which must be held as an endowment for the benefit of future generations as well as present ones. Illinois Cent. R.R. v. Illinois, 146 U.S. 387, 453 (1892). This duty, arising as an inherent right of the people, and having constitutional underpinnings, is separate and beyond NEPA, which imposes just a procedural mandate. See generally See Gerald Torres & Nathan Bellinger, The Public Trust: The Law's DNA, 4 WAKE FOREST J.L. & POL'Y 281 (2014).

Clearly the EIS contemplates severe, irreversible substantial impairment of the fisheries, waters, and public lands (for the reasons stated in the Joint Letter and not reiterated here). In allowing this vast [ndash] and for all practical purposes permanent [ndash] destruction, the Forest Service is grossly violating its most fundamental duty under the public trust principle. Yet the DEIS gives no mention of this flagrant violation.

Duty to Exercise Prudence and Caution in Managing Trust Resources

The fisheries at issue here are on the brink of extinction, and this project would threaten to destroy a last stronghold of habitat. It is appalling that the Forest Service considers some fish tunnel a safeguard. This is an idea appropriate for cartoons, not for fiduciary management. The public vests power in the agencies so that the agencies can bring rigor and expertise to fiduciary management decisions. The Forest Service, working on behalf of Midas to push this project through, has utterly shoved aside its procedural duty to exercise utmost prudence and caution in managing public trust resources.

Duty to Restore the Resources

A public trustee has the continuing duty to assess steps to protect trust assets and restore the resource where it has been damaged. Here the Forest Service has failed to rigorously assess its duty to restore areas in the mining zone already damaged by its past mismanagement. To carry out this trust obligation, the Forest Service must develop a full plan of restoration that is separate and apart from the profit interests so relentlessly promoted by Midas Corp.

For all of these reasons, I ask that the Forest Service, under the supervision of the Inspector General, conduct a separate trust analysis independent of any influence exerted by Midas Corp.