



THE STIBNITE PROJECT:

A CASE STUDY IN MINE APPLICANT-RELATED DELAYS IN THE HARDROCK MINE PERMITTING PROCESS

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August 25, 2022

1. Overview

In March 2022, the Department of Interior announced the formation of the Interagency Working Group (IWG) to gather information and make recommendations for improving federal hardrock mining laws, regulations and permitting policies in the United States.¹ During this process, mining companies have asserted that the mine permitting process takes too long and should be streamlined to fast-track mine permitting. This conflicts with data provided by the mining industry annually to the Fraser Institute, a Canadian think tank, which documents prompt permitting. According to their 2021 survey of mining companies, two-thirds of Idaho exploration permits were approved within 10 months, and all of them within 18 months.²

Similarly, a 2016 GAO report found that over a 4-year period, the Bureau of Land Management (BLM) and the Forest Service approved 68 mine plans of operation, taking an average of 2 years for plan approval.³ The report found the two most frequently cited challenges by the Forest Service and BLM in terms of delays were (1) the low quality of information operators provided in their mine plans and (2) the agencies' limited allocation of resources for their hardrock mining programs.

The factors that influence mine permitting times are important considerations in the IWG review. This case study, which reviews the current mine permitting process for the proposed Stibnite Project in central Idaho, similarly documents major delays in the mine permitting process. These delays were associated with the mine applicant's original submission of a poorly-developed Plan of Operations that lacked the

¹ Federal Register, Vol. 87, No. 62, March 31, 2022. Available at:<https://www.federalregister.gov/documents/2022/03/31/2022-06750/request-for-information-to-inform-interagency-working-group-on-mining-regulations-laws-and>

² Frasier Institute, Annual Survey of Mining Companies Permitting Times, 2021. Available at:<https://www.fraserinstitute.org/resource-file?nid=14573&fid=17568>

³ <https://www.gao.gov/assets/gao-16-165.pdf>

necessary supporting material, the mine applicant's decision to make major modifications midway through the Environmental Impact Statement (EIS) process, and the mine applicant's repeated delays in providing adequate and timely reports, baseline data, modeling and analysis.

2. The Stibnite Project

The Stibnite Gold Project (SGP) consists of a proposed open-pit, cyanide vat leach mine site and processing facilities, associated access roads, and off-site facilities. The mine site is located on patented and unpatented mining claims in central Idaho within the Payette National Forest in the East Fork South Fork Salmon River (EFSFSR) drainage basin. The access roads are located in the Boise and Payette National Forests. The SGP area is a complex blend of both remote wilderness lands with high recreational values and potential wilderness characteristics, and areas impacted by historical gold, silver, antimony, and tungsten mining, processing, and resulting legacy contamination. The potentially affected area encompasses approximately 3,500 acres. The project is also located entirely within the homeland of the Nez Perce People and within the Tribe's area of exclusive use and occupancy as adjudicated by the Indian Claims Commission.⁴

3. The mining applicant caused substantial and repeated delays in the EIS process by failing to provide the agencies with adequate and timely information.

Midas Gold (now Perpetua Resources) submitted a plan of operations (known as the PRO) to the Forest Service for the proposed Stibnite Project in September 2016.⁵ The Notice of Intent was published in the federal register on June 5, 2017.⁶ Forest Service documents demonstrate that the timeline for issuing the Draft Environmental Impact Statement was delayed for extended periods as a result of delays by the mine applicant in the delivery of necessary reports, modeling results and adequate information and analysis, illustrating that the Plan of Operations was not properly or sufficiently developed at the time of submission. For example:

Two-month delay (from February 2019 to April 2019): According to Forest Service documents, the Schedule of Proposed Actions (SOPA) timeline for the release of the DEIS was postponed two months (from February 2019 to April 2019) due to the delay in the delivery of reports and modeling results by Midas Gold, with "many reports being pushed out as much as five weeks, relative to the deliverables schedule used to prepare the July 1 SOPA."⁷ According to the Forest Supervisor, important aspects of the applicant's "modeling rely on operational designs or reclamation and closure details that have yet to be finalized by Midas Gold such that the agencies can make adequate determinations."⁸

⁴ Nez Perce Tribe v. United States, Docket #175, 18 Ind. Cl. Comm. 1.

⁵ Midas Gold, Stibnite Gold Project: Plan of Restoration and Operations, September 2016.

<https://perpetuaresources.com/wp-content/uploads/2017/05/2016-09-21-Stibnite-Gold-PRO-Executive-Summary.pdf>

⁶ Federal Register, Vol. 82, No. 106, June 5, 2017, <https://www.govinfo.gov/content/pkg/FR-2017-06-05/pdf/2017-11483.pdf>

⁷ U.S. Forest Service, Letter from Keith Lannom, Payette National Forest Supervisor to Laura Sayer, Midas Gold, August 28, 2018.

⁸ *Id.*

Three-month delay (from May 2019 to August 2019): The timeline for the release of the DEIS was postponed three months (from May 2019 to August 2019) due to “multiple changes to Midas Gold’s delivery schedule for reports and modeling results, with several reports being pushed out as much as 3 months.”⁹ According to the Forest Service memo, “the water related information from Midas Gold is particularly important to inform alternatives and impact analysis and there are several key products that Midas Gold does not plan to submit until January 2019 (based on the November 9, 2018 schedule provided by Midas Gold.”¹⁰ The memo further states that “the Forest has concerns that we will not have the level of detail necessary to define a reasonable range of action alternatives such that an adequately comparative analysis can be completed by the currently projected DEIS publication in February 2019.”¹¹

4. The mine applicant made major modifications to the mine plan mid-way through the permitting process, substantially delaying the EIS process.

In addition to the repeated delays described in the previous section, Midas Gold also submitted major revisions to its proposed mine plan midway through the EIS process, resulting in substantial additional delays. The revised mine plan (known as the Modified Proposed Action or ModPRO) was submitted to the Forest Service in May 2019 (Brown and Caldwell, 2019)¹² after public scoping but prior to the preparation of the Draft Environmental Impact Statement (DEIS) release on August 14, 2020.¹³ In response, the Forest Service included the original plan (the PRO) and the ModPRO in the DEIS as Alternatives 1 and 2, respectively.¹⁴ The public comment period for the DEIS culminated on October 28, 2020.¹⁵ At that time, the Forest Service projected that the Final EIS would be released in May 2021, with a final agency decision in September 2021.¹⁶

However, after the DEIS was released and the public comment period was complete, Midas Gold submitted a second major revision of the plan of operations to the Forest Service (known as ModPRO2) that was submitted to the Forest Service in May, 2021.¹⁷ The revised plan of operations, which Midas Gold referred to as a “new alternative,” incorporated 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.¹⁸ Midas Gold also proposed to

⁹ US Forest Service Stibnite Gold Project Schedule Memo, November, 2018

¹⁰ *Id.*

¹¹ *Id.*

¹² Perpetua Resources, Stibnite Gold Project, Refined Proposed Action ModPRO2, October 2021, Summary, p. 2. <https://www.dropbox.com/s/5weiss8d0psmgt0/MODPRO2%20December%202020.pdf?dl=0>

¹³ Federal Register, Comment period extension, <https://usfs-public.app.box.com/v/PinyonPublic/file/933787893001>

¹⁴ Perpetua Resources, Stibnite Gold Project, Refined Proposed Action ModPRO2, October 2021, p. 3.

https://perpetuaresources.com/wp-content/uploads/2021/10/2021_10_15_-ModPRO2_Revision_clean.pdf

¹⁵ Federal Register, Comment period extension, <https://usfs-public.app.box.com/v/PinyonPublic/file/933787893001>

¹⁶ Payette National Forest Schedule of Proposed Actions, 10/01/2020 to 12/31/2020,

<https://www.fs.usda.gov/sopa/components/reports/sopa-110412-2020-10.pdf>

¹⁷ Perpetua Resources, Stibnite Gold Project, Refined Proposed Action ModPRO2, October 2021, Summary, p. 2.

https://perpetuaresources.com/wp-content/uploads/2021/10/2021_10_15_-ModPRO2_Revision_clean.pdf

¹⁸ *Id.*

submit additional data and analyses to the Forest Service in support of its new plan that were not included in the DEIS, including:¹⁹

- 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
- 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 ModPRO2 acknowledged that “the timing of completion of some studies and analysis conducted during preparation of the DEIS did not allow for some results to be fully considered in the DEIS effects analysis.”²⁰ These included:

- Updated geological and mineral resource modeling;
- Aquifer testing in the Meadow Creek valley and subsequent hydrogeologic modeling changes;
- Revised geochemical characterization of development rock and ore, which included additional metallurgical testing to confirm geochemical characteristics of the resultant tailings;
- Updated site wide geochemical modeling for life-of-mine and post-closure, including predicting modeling of the proposed mine features and anticipated potential impacts to surface water and groundwater quality; and
- Updated water balance modeling.²¹

In addition to acknowledging the incomplete analysis components in the DEIS, the ModPRO2 cited numerous unfinished supporting documents. Nearly half of the references cited in the ModPro2 were still “in progress,” with date “TBD,” including the water management plan, reclamation and closure plan, mitigation plans, stream designs, and monitoring plans:²²

- Brown and Caldwell (in progress [a]). Stibnite Gold Project Environmental Monitoring and Management Plan. Being prepared for Midas Gold Idaho, Inc. Date TBD.

¹⁹ Midas Gold, Stibnite Gold Project, Refined Proposed Action ModPRO2, December 2020, Table A-1.

²⁰ ModPro2 at p. 3

²¹ *Id.* at p. 4.

²² *Id.* At p. 92.

- Brown and Caldwell (in progress [b]). Stibnite Gold Project Water Management Plan. Being prepared for Midas Gold Idaho, Inc. Date TBD.
- Brown and Caldwell (in progress [c]). Stibnite Gold Mitigation Plan. Being prepared for Midas Gold Idaho, Inc. Date TBD.
- Brown and Caldwell and Rio ASE (in progress). Fisheries and Aquatic Resources Mitigation Plan. Being prepared for Midas Gold Idaho, Inc. Date TBD.
- Brown and Caldwell, McMillen Jacobs Associates and BioAnalysts (in progress). Fishway Operations and Management Plan. Being prepared for Midas Gold Idaho, Inc. Date TBD.
- Rio ASE (in progress). Stream Design Report Stibnite Gold Project. Being prepared for Midas Gold Idaho, Inc. Tetra Tech (in progress [a]). Conceptual Mitigation Plan Stibnite Gold Project. Being prepared for Midas Gold Idaho, Inc.
- Tetra Tech (in progress [b]). Reclamation and Closure Plan Stibnite Gold Project. Being prepared for Midas Gold Idaho, Inc.
- Tetra Tech (in progress [c]). Wildlife Habitat Mitigation Plan. Being prepared for Midas Gold Idaho, Inc. Date TBD.

The Plan of Operations was subsequently altered yet again as a “Refined Proposed Action ModPro2” which was posted on the Forest Service Stibnite Gold website in October 2021.²³ Perpetua Resources (formerly Midas Gold) describes the process in its application:

More detailed feasibility analyses were completed, and components were reevaluated to further avoid and minimize environmental impacts. The subsequent Modified Proposed Action (ModPRO) was submitted to the USFS in May 2019 (Brown and Caldwell [BC] 2019) and was evaluated in the Draft Environmental Impact Statement (EIS) as Alternative 2.

and

After the DEIS was made available for public comment, Perpetua Resources reviewed the public comments submitted, consulted with agencies, evaluated data, and conducted additional analyses to identify more refinements that could reduce the overall project footprint, reduce wetland impacts, improve surface water and groundwater quality, reduce temperature impacts to surface water, reduce air emissions, improve fisheries and wildlife habitat, and improve reclamation and restoration design. Improvements were only considered if they were consistent with the requirements of National Environmental Policy Act (NEPA), Clean Water Act (CWA) Section 404, USFS regulations, the Endangered Species Act (ESA), Section 106 (cultural resources) and other regulatory requirements. These improvements resulted in a further refined proposed action, hereinafter referred to as the “ModPRO2”. The USFS will replace Alternative 2 (the ModPRO) with the ModPRO2 in the Supplemental Draft EIS (SDEIS).²⁴

Midas Gold/Perpetua Resource’s decision to submit major revisions to the mine plan midway through the permitting process, including additional data and analyses, resulted in a major change to the proposed

²³ Perpetua Resources, Stibnite Gold Project, Refined Proposed Action ModPRO2, October 2021, <https://usfs-public.app.box.com/v/PinyonPublic/file/933784911620>

²⁴ *Id.*

action, triggering a Supplemental Environmental Impact Statement to evaluate significant environmental impacts not evaluated in the EIS. Relatedly, the public had not had the opportunity to comment on these major changes.

The Supplemental EIS is currently expected to be released for public comment in August, 2022,²⁵ with a final record of decision issued in December 2023. Thus, the mine applicant's major changes to the mine plan are anticipated to delay a final decision by the Forest Service, previously anticipated in September 2021, to December 2023.

To be clear, the modification of a Plan of Operations is expected through the NEPA process. One of the goals of NEPA is to consider public comments and then develop and compare alternatives to avoid, minimize and mitigate impacts. However, in the case of the Stibnite Gold Project, the project proponent kept making major changes to the Plan of Operations and failed to provide supporting materials in a timely manner, precluding a timely, comprehensive review by agencies or the public. The project proponent should have conducted more thorough internal evaluations of its own proposal and conducted the necessary baseline studies before submitting the proposal for review. Instead, the proponent has rushed a series of unfinished proposals out for public review and then unfairly blamed the Forest Service and the NEPA process for the subsequent delays in the project timeline.

²⁵ US Forest Service, Schedule of Proposed Activities for the Payette National Forest.