



State of New Mexico
OFFICE OF NATURAL RESOURCES TRUSTEE
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September 6, 2016

Susan J Bohan
Assistant Regional Administrator
Office of Enforcement Compliance and Environmental Justice
United States Environmental Protection Agency
Region 8
1595 Wynkoop Street
Denver, CO 80202-8917

Re: Response to Notice Pursuant to CERCLA Section 104(b) Regarding the
Proposed Bonita Peak Mining District Site, San Juan County, Colorado

Dear Ms. Bohan,

Thank you for your letter of August 8, 2016, providing notice regarding the performance of future scoping and remedial studies at the Bonita Peak Mining District Site ("the Site") -- which is proposed for addition to the National Priorities List (NPL) -- and enquiring about our interests and concerns with the Site. Your letter cites Section 102(b)(2) of CERCLA¹ and Section 300.430(b)(7) of the National Contingency Plan (NCP).² As a trustee or co-trustee for natural resources that may have been, and may continue to be exposed to and/or injured by past, ongoing, and potential future releases of hazardous substances from the Site, New Mexico welcomes the opportunity to work with EPA to "coordinate necessary assessments, evaluations, investigations, and planning" as described in the NCP.

As a preliminary response, I write to provide confirmation that the New Mexico Office of Natural Resources Trustee (ONRT) does indeed have a strong interest in the Site. Based on an initial review of data available at this time, the ONRT believes there is a reasonable likelihood that natural resources for which New Mexico is trustee or co-trustee have been exposed to and injured by releases of hazardous substances from the Site. As demonstrated by the Gold King Mine blowout of August 5, 2015, discharges of mining waste in Colorado have the potential to adversely affect New Mexico's natural resources and successful remediation of the Site is a necessary step in avoiding additional future injuries to New Mexico's natural resources.

¹ The Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.

² 40 C.F.R. § 300.1 et seq.

We strongly believe that coordination between our agencies is necessary and appropriate, and we look forward to discussing approaches to liaising remedial assessment and natural resource damages evaluations, as well as ensuring adequate planning consideration of the relationship between remedial actions and natural resource restoration activities.

As an initial step in this coordination process, I request that the technical staff referenced in your letter provide ONRT any additional information to get a better understanding of the scope and nature of the ongoing and contemplated actions. My office, in turn, will endeavor to provide whatever information and input we can to provide you with an understanding of the scope and nature of New Mexico's concerns as natural resources Trustee. Further, we are committed to helping EPA ensure that remedial investigation and actions at the Site are appropriately protective of our Trust resources and consistent with New Mexico's restoration planning.

In addition to emphasizing New Mexico's necessary participation as a natural resource Trustee, I want to note that the New Mexico Environment Department has raised a number of procedural and scientific concerns with the NPL process thus far.³ We are concerned that EPA's conflicting role as responsible party and regulatory agency may impede the full range of necessary evaluation at the Site or New Mexico's full participation as a Trustee and interested stakeholder. Given this conflicting role, this office emphasizes the importance of independent review of EPA's actions and illuminates the heightened importance of stakeholder input on remediation decisions.

Thank you again for your notification and I look forward to continued communication and cooperation in this matter.

Sincerely,



Trais Kliphuis
Executive Director
Office of Natural Resources Trustee

cc: William Grantham, NM AG's Office
Butch Tongate, Acting NMED Secretary

³ See, e.g., NMED Comments on Proposed Superfund Site, June 13, 2016, at <https://www.env.nm.gov/river-water-safety/>