

Introduction

This Restoration Plan and Environmental Assessment (RP/EA) presents proposed restoration actions to address public losses caused by the release of hazardous substances from the California Gulch Superfund Site (“the Site”). A draft version of the RP/EA was released for public review and comment. The RP/EA provides information to the public regarding the affected environment, the natural resource injuries at the Site, and the restoration actions proposed to compensate for these injuries. The Site encompasses more than 15 square miles and contains more than 2,000 mine waste piles, as well as the Yak Tunnel which discharges drainage from numerous underground mines into California Gulch (CDPHE, Undated). Because of this extensive contamination, the Site was placed on the National Priorities List in September 1983. Emergency response actions and remediation by the U.S. Environmental Protection Agency (EPA) began in 1986 and continue to this day. A preliminary estimate of damages developed for the Site (Industrial Economics, 2006) determined that releases of hazardous substances from the Site, including heavy metals and acid, have resulted in injuries to groundwater resources, aquatic resources, and terrestrial resources. Injured terrestrial resources include both upland areas associated with mine waste deposits and floodplain areas associated with contaminated riparian areas, irrigated meadows, and fluvial deposits.¹ The proposed restoration actions described in this document will provide compensation to the public for these natural resource injuries.

The natural resource trustee agencies involved in developing this RP/EA are the U.S. Department of the Interior (DOI) represented by the U.S. Fish and Wildlife Service (USFWS); the U.S. Bureau of Land Management (BLM) and the Bureau of Reclamation (BOR); and the State of Colorado represented by the Colorado Department of Natural Resources (DNR), Colorado Department of Public Health and Environment (CDPHE), and Colorado Department of Law (DOL; collectively, the “Trustees”).² Authority to act on behalf of the public is given to trustees in CERCLA [42 USC §§ 9601 et seq.] and the CWA [33 USC §§ 1251 et seq.]. Actions to restore, replace, or acquire the equivalent of lost resources are the primary means of compensating the public for injuries to natural resources under these authorities.

The Trustees previously published an RP/EA for restoration actions at the Tiger and Dinero tunnels (Stratus Consulting, 2009), which proposed two restoration projects as partial compensation

¹ Additional information on injuries can be found in Chapter 2 of this document and in the Preliminary Evaluation of Damages prepared for the Upper Arkansas River Basin Natural Resource Damage Assessment (NRDA; Industrial Economics, 2006).

² Natural resources trustees are designated pursuant to Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC § 9607(f), Section 311 of the Clean Water Act (CWA), 33 USC § 1321, and other applicable law, including Subpart G of the National Contingency Plan, 40 CFR §§ 300.600–300.615. The DOI authorized official (“AO”) at this Site is the Region 6 Regional Director for the USFWS, and represents the interests of the Department, including all affected Bureaus. The State trustees, designated pursuant to Section 107 (f), are the Executive Director of CDPHE, the Attorney General of Colorado, and the Executive Director of Colorado DNR.

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for groundwater injuries in California Gulch. The Trustees allocated \$500,000 for these projects and construction began in 2009. This current RP/EA proposes additional restoration actions to compensate for groundwater, aquatic, and terrestrial resource injuries.

1.1 Trustee Responsibilities under CERCLA and the National Environmental Policy Act

The purpose of this RP/EA is to inform and solicit comments from members of the public on the restoration actions proposed to compensate for natural resource injuries and associated lost services resulting from the releases of hazardous substances at the Site. The RP/EA also serves as an EA pursuant to the National Environmental Policy Act (NEPA) [42 USC §§ 4321 et seq.] and the regulations guiding its implementation at 40 CFR §§ 1500 et seq. This plan describes the purpose and need for the proposed restoration actions, the restoration alternatives considered, including a no-action alternative, and the potential individual and cumulative impacts of restoration actions on the quality of the physical, biological, and cultural environment.

This document also serves as the RP for implementing the selected alternative, pursuant to the NRDA regulations issued by the DOI (43 CFR Part 11). Under the regulations, the alternative selected in the RP should ensure that damages recovered from the responsible parties are used to undertake feasible, safe, and cost-effective projects that address injured natural resources; consider actual and anticipated conditions; and are consistent with applicable laws and policies. Moreover, the RP/EA identifies the proposed alternative and describes how settlement monies received will be spent to achieve restoration goals.

The Trustees considered comments received during the public comment period prior to developing the Final RP/EA. This Final RP/EA includes a summary of comments received and Trustee responses to those comments (Appendix C).

1.2 Summary of Settlement

Resurrection Mining Company³ and Newmont USA Limited have agreed to pay \$10.5 million to settle allegations that the companies injured natural resources (under the NRDA provisions of CERCLA) as a result of discharges of hazardous substances from historical mining operations at the Site. In addition, the Trustees have received a \$10 million settlement plus interest from ASARCO LLC in bankruptcy proceedings.

A Memorandum of Understanding (MOU) among the trustee agencies stipulates that natural resource damage funds received will be used to restore natural resources in the upper Arkansas River watershed, in accordance with federal law. The money received will allow the Trustees to work together to restore the kinds of natural resources that were injured by releases of hazardous substances. The proposed restoration projects will be funded from the settlement funds received from these responsible parties. The Trustees also may issue a supplemental RP/EA in the future to fund

³ Resurrection Mining Company is wholly owned by Newmont USA Limited.

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additional restoration projects, depending on the amount of restoration funding remaining after funding first tier and second tier projects.

1.3 Coordination and Scoping

A variety of state and federal agencies are working together to plan and implement restoration activities to compensate for injuries at the Site. Agencies that are actively involved in these restoration activities include the USFWS, BLM, BOR, DNR, CDPHE, DOL, the Colorado Division of Wildlife (DOW), the U.S. Geological Survey (USGS), the Natural Resource Conservation Service (NRCS), and the Lake County Conservation District (LCCD). Faculty and students from Colorado Mountain College also are involved in project implementation.

In addition, the Trustees have worked with a number of different stakeholder groups to coordinate and scope projects. Projects in the Lake Fork, a tributary to the Arkansas River, have been closely coordinated with the work of the Lake Fork Watershed Working Group, which was formed in 2000 to address water quality issues in Lake Fork Creek. This stakeholder group includes representatives from Colorado Mountain College, a variety of federal and state agencies (listed below), Lake County, public interest groups, and private landowners in the area. The federal and state agencies involved include USFWS; BOR; EPA; U.S. Department of Agriculture (USDA) Forest Service; BLM – National Operations Center; USGS – Water Quality Division; CDPHE; Colorado Division of Reclamation, Mining, and Safety (DRMS); and DOW. This partnership has been working in cooperation for several years and several of the projects included in this RP/EA are an outgrowth of that partnership.

A group known as the Implementation Team of the Upper Arkansas River Restoration Project has sought to restore the 11-mile reach of the upper Arkansas River to a healthy condition. This group is led by the Lake County Conservation District in cooperation with local landowners, private industry, and federal and state agencies. The project is a cooperative “watershed approach” involving affected stakeholders to plan and implement restoration in the 11-mile reach. The stakeholder process began in 1996 when the Conservation District hosted a meeting of riverside landowners to determine the level of interest in pursuing river restoration, subsequently, the Conservation District began to coordinate meetings with private, federal, and state stakeholders to cooperatively share information and when appropriate, work on a scientifically-based plan to restore the upper Arkansas River and associated floodplain to a healthy, functioning, and sustaining condition. Proposed Trustee funding for in-stream and riparian restoration along the upper Arkansas River is being coordinated with this group.

The Trustees also have worked with the Lake County Open Space Initiative (LCOSI). LCOSI is a group that began in 1997 and includes more than 20 public agencies and private organizations to help protect and preserve open space, such as the Hayden Ranch. The Trustees are planning to work with LCOSI, Colorado State Parks, and other interested citizens and stakeholders to help identify and prioritize potential parcels for conservation easements, land acquisition, or land exchange arrangements with willing parties.

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1.4 Trustee Council Organization and Activities

A Trustee Council has been working on NRDA activities for the Site since 1993 and now operates according to an MOU, which outlines how the Trustee Council will coordinate and cooperate in carrying out the respective responsibilities of the trustee agencies to restore, replace, or acquire the equivalent of the natural resources injured or potentially injured as a result of the release of hazardous substances from the Site. The signatory agencies to the MOU are the CDPHE, DNR, DOL for the state of Colorado, and DOI for the United States. In addition, the USDA Forest Service (USFS) is a signatory to the MOU but has asked USFWS to represent their Trustee interests at the Site. Each of the participating parties has one primary representative to the Trustee Council.

The Trustee Council, through its members acting on behalf of each Trustee, is responsible for all aspects of the restoration process, including developing and selecting final projects, implementing and overseeing the implementation of those projects, and monitoring and evaluating the effectiveness of the projects. All actions approved by the Trustee Council are by unanimous approval.

1.5 Public Participation

This RP/EA provides the public with information about the natural resources and associated injuries assessed at the Site, the restoration objectives, restoration alternatives considered by the Trustees, and the preferred restoration alternative selected by the Trustees. In accordance with Federal and State regulations, a public meeting was held in Leadville on January 13, 2010. At this meeting, the Trustees presented information about the restoration process and the projects described in the Draft RP/EA. The Draft RP/EA was available for public comment for 45 days (January 13, 2010 through February 26, 2010). A notice of the availability of the Draft RP/EA was published in the following local newspaper:

Leadville Herald Democrat
PO Box 980
Leadville, CO 80461
719-486-0641

Copies of the Draft RP/EA were made available at the following locations:

Colorado Mountain College
Timberline Library
901 US Hwy 24 S
Leadville, CO 80461

Lake County Library
1115 Harrison Avenue
Leadville, CO 80461

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An electronic version of the Draft RP/EA was posted on the California Gulch NRDA website: <http://www.fws.gov/mountain-prairie/nrda/LeadvilleColo/CaliforniaGulch.htm>.

1.6 Responsible Party Involvement

The settling parties chose not to participate in restoration planning and implementation.

1.7 Administrative Record

The administrative record contains the official documents pertaining to the Site NRDA. The administrative record for the NRDA case is housed at the USFWS, Saguache Field Office, 46525 Highway 114, Saguache, CO 81149.

1.8 Document Organization

The remainder of the document is organized as follows. Chapter 2 describes the purpose and need for restoration. Chapter 3 describes the projects that make up the proposed restoration alternative and describes the no-action alternative. Chapter 4 describes the affected environment. Chapter 5 presents the environmental and socioeconomic impacts of restoration alternatives. Chapter 6 provides the list of preparers. Chapter 7 provides the list of agencies, organizations, and parties consulted. Appendix A provides further information on the proposed in-stream restoration project. Appendix B provides the land transaction policy for the Trustee Council. Appendix C provides a summary of public comments received and the Trustee responses to those comments, as well as copies of the public comments.