

Smoky Canyon Mine Panels F & G Final EIS

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Chapter 6

Consultation and Coordination

6.1 Public Participation Summary

6.1.1 Public Scoping Period and Meetings

Initial Scoping

The public was provided a 30-day scoping period at the beginning of the EIS process to identify potential issues and concerns associated with the Proposed Action. The Notice of Intent (NOI) for the Smoky Canyon Mine Panels F and G Extension EIS was published in the Federal Register on September 15, 2003. A copy of this NOI is included in the *Public Scoping Summary, Smoky Canyon Mine, Panels F & G Extension* (Scoping Summary Report) (JBR 2004a). A legal notice was published in local newspapers as follows:

<i>Idaho State Journal</i>	Pocatello, Idaho	September 19, 2003
<i>Star, Valley Independent</i>	Afton, Wyoming	September 25, 2003

A news release was published in local newspapers and presented in media as follows:

<i>Idaho State Journal</i>	Pocatello, Idaho	September 17, 2003 and October 9, 2003
<i>Idaho Statesman</i>	Boise, Idaho	September 18, 2003
<i>KTVB TV</i>		September 18, 2003

The public mailing list was compiled and 115 letters sent to interested individuals, agencies, and groups. The EIS scoping mailing list is included in the Scoping Summary Report (JBR 2004a).

A meeting with Lincoln County, Wyoming and Caribou County, Idaho county commissioners was held on September 25, 2003. The purpose of the meeting was to introduce commissioners to the Project and discuss Crow Creek Road improvements associated with the conveyor alternative.

Two public meetings were held as scheduled in Pocatello, Idaho at the Pocatello Airport meeting room on October 7, 2003 and in Afton, Wyoming on October 8, 2003 at the Star Valley High School. The open house meetings provided a Project description, photo displays of the Project Area, and a forum for exchange of information and ideas or concerns related to the Project. Comment forms were available at the meetings. Agency, Project proponent, and consultant representatives were present including: James Blair of the Bureau of Land Management (BLM), Scott Gerwe and Jeff Jones of the United States Forest Service (USFS); Brian Buck and Greg Brown of JBR Environmental Consultants, Inc., and Lori Hamann and Dennis Facer of Simplot. Lists of individuals who signed attendance sheets at the public meetings are included in the Scoping Summary Report (JBR 2004a).

Comments were requested to be received on or before October 20, 2003. By the close of the scoping period on October 20, 2003, 49 comment letters, 3 comment sheets, and 130 e-mails had been received for the Smoky Canyon Mine Project. In addition, 47 comment e-mails were received after the end of the scoping period for a total of 229 comments. These letters included

143 standardized comment letters (about 62 percent) of four types (Standardized Letters A-D). Some of the standardized letters did contain additional commentary that was not part of the template. Copies of all written comment letters, forms, and e-mails are included in the Scoping Summary Report (JBR 2004a).

Standardized letters generally fitting Form A, which originated with the proponent, were generally in favor of the Project. The letters discuss several topics including: the Project in relation to current USFS and BLM operating plans and the Roadless Area Conservation Rule (RACR), socioeconomic impacts of phosphate mining, the importance of fertilizers, and the selenium issue. Standardized Letter A was mailed and/or e-mailed by 52 individuals. Standardized letters generally fitting Form B originated on the Greater Yellowstone Coalition website and were often against the Project or aspects of the Project (such as mining in Inventoried Roadless Areas), but at the same time urged that any approval stress protection of air, water, and wildlife habitat. Standardized letters generally fitting Form B were e-mailed by 68 individuals. Standardized letters generally fitting Form C are similar to Standardized Letter B, stating that the BLM must respect the 9th Circuit Court of Appeals in upholding the roadless rule. In addition, these letters state that the agencies must explore and evaluate all reasonable alternatives before permitting the Project. Standardized Letter C was e-mailed by 17 individuals. Standardized letters generally fitting Form D originated with a supplier of the proponent and are in favor of the Project. These letters discuss the socioeconomic impacts of phosphate as fertilizer and the impacts to suppliers if the Project is not approved. Standardized Letter D was e-mailed by six individuals. All other concerns included in these standardized letters were noted for analysis as well as the standardized comments.

A number of e-mails and letters were received from local landowners and their family members and friends from the Crow Creek, Valley. They were very concerned about the impacts of mining and transportation alternatives close to their properties and the effects it would have on water and air quality; fish, vegetation, and wildlife; scenic integrity; property values; and heritage issues.

Comments received in response to solicitations, including names and addresses of those who commented, are considered part of the public record on this Proposed Action and are available for public inspection. The mailing list for the Project was revised to add those persons who provided comments in response to scoping, requested to be on the mailing list, or signed a scoping meeting list.

6.1.2 EIS Mailing List

An EIS mailing list of interested persons was initially assembled from mailing lists maintained at the BLM Pocatello Resource Area Office, USFS Caribou-Targhee National Forest Office, and the mailing list from the previous Simplot Smoky Canyon Mine Project, Panels B & C. This list was supplemented by addresses of scoping participants. Additional parties have been added to the mailing list as individuals or groups have contacted the Agencies. All parties and agencies on the mailing list were sent a postcard and/or e-mail on August 3, 2005 and/or September 8, 2005 requesting that they complete and return a postage-paid card indicating level of interest in receiving a copy of the Draft EIS. The mailing list for the Draft EIS was adjusted accordingly. After comments were received on the DEIS, the addresses of substantive commenters were added to the Final EIS mailing list.

6.1.3 Distribution of the Draft EIS

A 60-day Draft EIS review period was initiated by publication of the Notice of Availability (NOA) for the Draft EIS in the Federal Register on December 29, 2005 and December 30, 2005 for the EPA NOA. The NOA was amended January 13, 2006 and a comment period extension was published by the EPA on February 24, 2006. The comment period was extended an additional 15 days and ended March 21, 2006.

The Draft EIS was distributed as follows:

- A Notice of Availability was published in the Federal Register specifying dates for the comment period and the date, time, and location of the public comment meetings.
- A news release was provided by the Agencies at the beginning of the 60-day comment period on the Draft EIS. The news release was submitted to the same news organizations as for the initial public scoping announcement.
- The Draft EIS was distributed to interested parties identified in the updated EIS mailing list, as described above, and made available via the internet.

Public meetings were held in Afton, Wyoming and Pocatello and Soda Springs, Idaho (January 17-19, 2006) to obtain comments on the Draft EIS and to answer questions that the public had regarding the Project or the EIS process.

At the end of the comment period, a total of 38,616 letters, e-mail, and comment forms had been received. Of these, 1,055 were original (or substantive) comment letters. The remaining 37,561 were form response letters or other organized response campaigns. See Chapter 7 for public comments and responses.

6.1.4 Final EIS Distribution

The Final EIS distribution was completed after consideration was given to comments received on the Draft EIS. A 30-day Final EIS review period was initiated by publication of the Notice of Availability for the Final EIS in the Federal Register. The Final EIS was released as follows:

- Notice of Availability published in the Federal Register.
- Copies of the Final EIS sent to addresses on the updated mailing list and made available via the internet.
- A news release issued to the same newspapers used for previous Project announcements.

6.1.5 Record of Decision

Subsequent to the 30-day review period for the Final EIS, the USFS will prepare a Record of Decision regarding off-lease mining related activities and the BLM will consult with the USFS and prepare a Record of Decision regarding on-lease mining related activities. The BLM and USFS Record of Decisions will be distributed to people and organizations identified on the updated Project mailing list. A Notice of Availability will be published in the Federal Register. A news release will be made to the same newspapers used for previous Project announcements.

6.2 Public Input

Letters and oral comments received by the Agencies on the Draft EIS were reviewed and evaluated by the Agencies to determine if information provided in the comments required formal response or contained new data that identified deficiencies in the EIS. Steps were initiated to correct any such deficiencies and to incorporate information into the Final EIS.

6.2.1 Consultation with Others

The following state and federal agencies were consulted during preparation of the EIS:

Idaho Conservation Data Center
Idaho Department of Environmental Quality
Idaho Department of Fish and Game
Idaho Department of Lands
Idaho Department of Water Resources
Idaho State Historic Preservation Office
Wyoming Department of Environmental Quality
Wyoming Game and Fish Department
U.S. Army Corps of Engineers
U.S. Environmental Protection Agency
U.S. Fish and Wildlife Service
U.S. Geological Survey

The following tribal organizations were consulted:

Shoshone Bannock Tribes, Fort Hall Business Council

6.2.2 Consultation with Idaho Department of Environmental Quality

The BLM and USFS requested that the Idaho Department of Environmental Quality (IDEQ) be a cooperating agency for this Project. IDEQ accepted this status and the BLM and USFS coordinated with the IDEQ during the preparation of the Draft EIS and in reviewing the information in the document. IDEQ participated in the bi-weekly Project conference calls and Project meetings as needed.

6.3 Government to Government Consultation

The Shoshone-Bannock Tribes have reserved Treaty Rights on the public domain lands, in this case, administered by the Caribou-Targhee National Forest. The relationship of the United States government with American Indian tribes is based on legal agreements between sovereign nations. The Fort Bridger Treaty of July 3, 1868 reserved hunting and fishing rights for Tribal members on "...all unoccupied lands of the United States." Consultation with the Fort Hall Business Council of the Shoshone-Bannock Tribes is required on land management activities that could affect forest uses and access to the forest by tribal members.

A summary of communications between the Agencies and Shoshone-Bannock Tribes is provided in **Section 3.14.3**. A comment letter from the Fort Hall Business Council regarding the DEIS was received by the Agencies in March 2006. The text of the letter and Agency responses (in *Italic Bold*) to their comments and concerns follow.

6.3.1 Fort Hall Business Council – Shoshone Bannock Tribes’ Comments on the DEIS

March 20, 2006

Smoky Canyon Mine DEIS
c/o The Shipley Group
PO Box 2000
Bountiful, Utah 84011-2000

Bill Stout, EIS Project Manager
BLM Pocatello Field Office
4350 cliffs Drive
Pocatello, Idaho 83204

U.S. Forest Service
Caribou-Targhee National Forest
c/o Larry Timchak, Forest Supervisor
Soda Springs Ranger District
421 West 2nd Street
Soda Springs, Idaho 83276

Re: Shoshone Bannock Tribes’ Comments on the Draft Environmental Impact Statement (DEIS) for Smoky Canyon Mine, Panels F & G.

Dear Sirs:

The Shoshone Bannock Tribes would like to thank you for the opportunity to comment on the DEIS for the Smoky Canyon Mine Panels F & G (Smoky expansion project). The proposed project area is of great significance to the Tribes. The 1868 Fort Bridger Treaty allows for the Tribes to continue to hunt and gather in our aboriginal territory. The proposed project is within our aboriginal area and is often frequented and utilized by Tribal members.

The Tribes submitted comments on this proposed project during the scoping phase of the NEPA process. The Tribes have and will continue to be involved in this project. The Tribes appreciate the Forest Service, BLM, and the contractors for all the hard work and diligent commitment to Tribal concerns.

The Tribes are concerned that the Forest Service is requesting that comments be submitted to a third party. In the spirit of government-to-government consultation and the Forest Service’s trust

responsibilities, the Tribes do not want our comments to be considered “public comments.” The Tribes request that the forest Service address the Tribes’ comments in a manner that is consistent with the United States government’s trust responsibility and obligations to the Shoshone-Bannock Tribes. Accordingly, the Tribes’ comments should be handled separate from the comments submitted by the general public.

The BLM and the Forest Service recognize their tribal trust responsibility to the Shoshone Bannock Tribes concerning proposed actions or decisions that have the potential to impact tribal rights and resources as defined in the 1868 Fort Bridger Treaty. The Agencies recognize that consultation with the Tribes is required by law and is not public scoping as defined by NEPA regulations. The Tribes’ comments on the Smoky Canyon Mine DEIS will be the subject of formal government-to-government discussions between agency decision-makers and the Fort Hall Business Council. The EIS is being completed by a private contractor, and subcontractors, with oversight and approval from the Agencies. The private contractor will compile final documentation of the Fort Hall Business Council comments and agency responses which will appear in Chapter 6, Consultation and Coordination, not within the Public Comments and Response in Chapter 7. Since receiving comments from the Council, we have conducted two government-to-government meetings, June 29, 2006 and September 6, 2006, with the Fort Hall Business Council to discuss our responses to the Council’s comments on the Panels F & G DEIS.

The Tribes continue to adamantly oppose this proposed project. We still believe the project is essentially two separate projects and should be treated as such. The expansion project and the new lease project should be separated, with two separate EIS’s and independent documents and plans.

The Agencies understand and acknowledge the Tribes opposition to the Smoky Canyon Mine Panels F & G expansion into the Manning and Deer creek leases. The Agencies are processing Simplot’s application under, and consistent with, current policy. The effects of not allowing mining, under the submitted mine plan, are considered in the EIS as the NO ACTION ALTERNATIVE. It is described in Section 2.6.3 and analyzed in Chapters 3, 4, and 5. While this alternative has been fully considered, it is not part of the Agency Preferred Alternative.

As stated in the CEQ guidance (§1502.4), “Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.” Panels F and G are connected actions, as mining of Panel G would be, in part, concurrent with mining Panel F in order to maximize the ore recovery. This provides the Agencies with a holistic view of the impacts. We want to point out that the impacts from each major component of the Proposed Action and Alternatives have been separately described in the EIS so the public, Tribes, and decision maker can discern the environmental impacts of each mine panel separately. The EIS is structured so that the impacts from Panels F & G can be separated and either a single or multiple decisions can be issued.

The Tribes continue to object to the installation of additional facilities and structures in the Smoky Canyon Mine area. All the newly constructed or installed facilities are proposed to be placed on federal land. The Tribes strongly object to any structure being constructed or installed on the federal lands identified in the DEIS.

The required structures and facilities associated with this project are described in Section 2.4 of the DEIS. They will be temporary and will be removed and surfaces reclaimed at completion of mining. Those facilities may include ready lines, electric substations, warehouse/storage areas, a lunchroom, repair shop, restrooms, fuel storage, and blasting supply storage. Additional language has been added to this section to clarify the temporary nature of the facilities.

In conjunction with the proposed new facilities, the Tribes requested information regarding the actual placement and location of the buildings including: copies of all permits associated with the new facilities (such as water rights for the potable water), building permits, and all applicable permits associated with these facilities. The Tribes are still requesting that this information be provided to the Tribes to facilitate their review and further comments.

Exact placement of all facilities is unknown until after the final decision is made in the ROD. The surface area occupied by these structures and facilities would be a small fraction of a percentage of the entire surface area affected by the proposed mining activities.

The Tribes would need to contact the other State and local permitting agencies directly to obtain copies of their permits as they are issued. To date, Simplot has not provided a list of additional permits to be attained. The Tribes can request the information from the permitting agency or directly from Simplot.

Baseline data was collected for the DEIS. The Tribes were disappointed, however to see that surface water was not fully characterized. Impacts to surface water associated with the project will be significant. The Tribes are still requesting that a complete baseline study be completed as well as a projected modeling if the project is allowed to move forward.

The Agencies believe the current analysis conducted for the EIS to characterize the surface water is sufficient for environmental analysis, and is in compliance with the CEQ regulations. The Agencies believe the levels of baseline data and modeling conducted for the surface water impact analyses are sufficient for the purposes of the agency decisions required for this project.

Water chemistry baseline data was collected specifically for this project from 2003 to 2006. The 2006 data was following a more normal snow pack. Additional data from other regulatory programs was also used; the bulk of which dates from 1992 to the present. Surface water flow data back to 1979 has been incorporated into the analysis. While baseline data collection specific to this project has taken place mostly during a below normal precipitation cycle, impact analysis is based on a climate model that incorporates 100 years of historic weather related data.

Specific comments in regards to the DEIS

Page 1-7, Federal Land Management Plans. Include any management prescriptions from either the BLM RMP or the Forest Service Management Plan, which address Tribal rights and cultural issues that are applicable to this proposed action.

This section of the EIS was edited to include the applicable forest-wide goals and standards of the Caribou Forest Plan regarding tribal coordination.

Goals:

- ***Tribal Treaty rights and other Federal trust responsibilities are met and Tribal governments are involved in planning and implementation of programs of mutual interest.***
- ***The Forest recognizes the tribes' right to self-determination and control of their resources and their relationship both among themselves and with non-Indian governments, organizations, and persons.***
- ***Culturally significant items and sites are identified, protected and treated within the context of the cultural that identifies and values them.***
- ***Relationships with American Indian populations are improved to better understand and integrate tribal needs and desires with Forest management activities.***

Forest-wide Standard: Forest consultation procedures and intergovernmental agreements with the tribes to guide future cooperative efforts shall comply with the protocols set forth in the National Resource Book on American Indian and Alaska Native Relations Working Draft 1995 or its successor (2003 Caribou RFP 3-34).

The BLM Pocatello Field Office Resource Management Plan and BLM policy acknowledge a relationship between the U.S. Government and American Indian tribes based on Indian trust responsibilities and other legal agreements such as treaties made between these sovereign nations. As a federal agency, the BLM shares in the federal trust responsibility to the Shoshone-Bannock Tribes on the management of federal lands. The federal trust responsibility is related to traditional/cultural uses, as well as the health of the land and water resources and therefore to the socio-economic needs of the Shoshone-Bannock Tribes. Consultation with the Shoshone-Bannock Tribal Council is required on land management activities and land allocations that could affect these rights. The goal of this coordination is to assure that tribal governments, Native American communities, and individuals whose interests might be affected have a sufficient opportunity for productive participation in BLM resource management decision making as set for the BLM Manual Section 8160.

The BLM Pocatello Field Office, Resource Management Plan (1988) guides land management activities on public lands. Land management decisions such as mineral leasing and subsequent mining need to recognize these rights and trust responsibilities. The BLM also administers the subsurface mineral estate, for phosphate and other non-energy leasable minerals, on the Caribou-Targhee National Forest. The 1868 Fort Bridger Treaty reserves off reservation treaty rights to Tribal members. Provisions of the Fort Bridger Treaty reserve the Shoshone-Bannock people's rights to practice hunting, gathering, fishing, and traditional use on all unoccupied public lands. As these treaty rights are related to surface management, and not the mineral estate, the BLM relies on coordination with the Forest Service and compliance with the CNF Revised Forest Plan (USFS 2003a) to ensure sufficient protection of those resources to which the Shoshone-Bannock people have certain rights.

The engineered cover system (Section 2.6, Mining Alternative D) which will be incorporated into the Agency Preferred Alternative, is designed to reduce selenium release to ground water and surface water to well within acceptable limits. Thus, the Agency Preferred Alternative would comply with State and federal water quality standards and be protective of fisheries and the aquatic environment. In addition, the engineered cover system would also protect against the uptake of selenium by reclamation vegetation thereby protect grazing and wildlife resources. Additional mitigation would include culverts with fish ladders where roads cross fish bearing streams, sediment control measures, and scheduling ground disturbing activities to minimize impacts to migratory birds. Section 2.5, Appendix 2C, and Appendix 2D further describe environmental protection measures.

To ensure a thorough assessment of issues and potential impacts to Native American Indians and their treaty rights, numerous contacts were made with the Shoshone-Bannock Tribes at various levels that ranged from meetings with Tribal technical staff, to mine site visits, as well as formal government-to-government consultation with the Fort Hall Business Council. See Table 1.5-1 in Chapter 1.

Page 1-12, 1.5. Tribal Treaty Rights and Native American Consultation. Revise the first paragraph to provide a more accurate explanation of the Shoshone-Bannock Tribes' reserved hunting and fishing rights recognized by the Fort Bridger Treaty of 1868. The Tribal membership's right to hunt and fish within their aboriginal territory were not "granted" by any treaty or agreement. Rather, these important rights have existed since time immemorial by virtue of the Tribes' original occupation of their aboriginal territory and the Tribes' inherent Tribal sovereignty. To accurately reflect the foregoing, the first paragraph of Section 1.5 should be replaced with the following:

"The Shoshone – Bannock Tribes have the reserved inherent and sovereign rights to hunt, fish, gather, and exercise uses (including, but not limited to, grazing activities) on the "unoccupied lands of the United States" as understood by the Tribes' at the time the Fort Bridger Treaty of 1868 was signed. The Tribes maintain that these rights apply to all federal and state public lands within the Tribes' aboriginal territories. The above-reference rights of the Shoshone-Bannock Tribes apply to all of the lands that are presently administered by the CTNF and the subject of the project addressed in the EIS. These rights are still in effect, and the federal agencies involved in this process recognize these rights. Government to Government consultation with the Fort Hall Business Council of the Shoshone-Bannock Tribes is required for any land management activities and land allocations that could affect these rights."

Comment noted. Section 1.5 was edited to include the changes, additions, and clarifications identified by the Tribes. The text in Section 1.5 was replaced with the text provided above. In recognition of a letter from the Fort Hall Business Council received July 27, 2007 the paragraph above has been edited as follows and corrected in Section 1.5:

"The Shoshone – Bannock Tribes have the reserved inherent and sovereign rights to hunt, fish, gather, and exercise uses (including, but not limited to, grazing activities) on the "unoccupied lands of the United States" as understood by the Tribes' at the time the Fort Bridger Treaty of 1868 was signed. ~~The Tribes maintain that these rights apply to all federal and state public lands within the Tribes' aboriginal territories.~~ The above-referenced rights of the Shoshone-Bannock Tribe's reserved rights apply to federal and some state lands that are unoccupied, of which includes the CTNF lands as indicated by the project boundaries. ~~all of the lands that are presently administered by the CTNF and the subject of the project addressed in the EIS.~~ These rights are still in effect, and the federal agencies involved in this process recognize these rights. Government to Government consultation with the Fort Hall Business Council of the Shoshone-Bannock Tribes is required for any land management activities and land allocations that could affect these rights."

The second paragraph of Section 1.5 should communicate that the Tribes' "concerns" are "concerns and objections." The third paragraph of Section 1.5 should place greater emphasis on the United States' and its agencies' trust responsibility to the Shoshone-Bannock Tribes, and thereafter address the specific federal agency policies applicable to a recognition of the United States' trust responsibility to Indian tribes and the necessary government-to-government consultation process. The DEIS did not clearly state that the trust responsibility of the federal government includes an obligation to protect and preserve the natural resources affecting the Tribes' treaty rights and that this document will fully consider the negative effects that this proposed mining activity would have upon Tribal interests and rights. The Tribes urge the BLM, Idaho State Director, and the Forest Supervisor of the Caribou-Targhee National Forest to make sure their administrative and management personnel fully understand their responsibilities as a federal trustee to the Tribes, and how their decisions will impact the Tribes' treaty rights discussed above.

Editorial changes have been made to this section. Please see the response to "Page 1-7, Federal Land Management Plans" comment above.

The Tribes will not support any commercial activities or federal agency actions that would adversely impact or result in losses or diminishment of Treaty rights, access to Treaty resources, impact Tribal members' ability to exercise off-reservation rights, or result in adverse impacts to cultural or natural resources without appropriate, effective, and acceptable mitigation measures taken to preserve and

protect the Tribes' rights and interests. Any decisions made by federal agencies must reflect a true and meaningful consideration of the United States' trust responsibility and impacts to the Tribes' reserved rights. It is imperative that the federal agencies and personnel involved in considering this project prioritize the Tribes' rights over any other proposed activities that are incompatible or inconsistent with those reserved rights.

Executive Order 13175 states that government agencies will consult with Indian Tribes when proposed policies or actions have tribal implications. The Agencies believe the DEIS includes sufficient mitigation measures to protect treaty resources. Alternatives were developed to be protective of surface resources. Additional mitigation measures are described at the end of each resource section in Chapter 4. Tribal recommendations for additional mitigation would be considered by the Agencies.

The agencies must manage the public lands through laws and regulations authorizing multiple uses. We are required to consider Simplot's proposed mine expansion into two phosphate leases to comply with the Mineral Leasing Act, regulations, and local land use plans. Through the leasing process, Simplot has purchased the right to develop the phosphate resource under the condition that a mine plan, sufficiently protective of the environment and natural resources, can be developed and approved. The Agency Preferred Alternative contains measures specific to protection of resources such as cover design to protect surface and ground water, sediment control, culverts with fish ladders, overburden covers designed to protect vegetation from selenium uptake, and scheduling ground disturbance to limit impacts to migratory birds.

Page 1-18, 1.614. Treaty Rights Resources. The Tribes support the inclusion of Treaty rights and cultural resources as an indicator, and urge the federal agencies to provide monitoring of indicators with regular reporting requirements and "triggers" set to proactively manage with projection as a goal. We want to ensure the placement of active and meaningful monitoring and avoid a system that amounts to simply "monitoring just to monitor."

Monitoring of resources used during the implementation of Treaty Rights has been developed. The monitoring plans for the project are described in Appendix 2E to the FEIS. The monitoring program is designed to include regular reporting of results and includes proactive responses if monitoring data indicate concerns over protection of environmental resources. Collection and review of monitoring data can be coordinated with the Tribes as requested.

Page 2-12, 2.3.7. Reclamation Activities and Mine Closure. Include a statement that the buildings, including ancillary mine facilities, road, transportation structures, etc., all will be temporary in nature, with the decommissioning to be completed; immediately upon closure.

Editorial changes were made to the text in the FEIS.

Page 2.24, Disturbance Areas and Reclamation Activities. The DEIS did not address impacts to Tribal grazing rights as a part of the disturbed area nor in their reclamation plan. How will this activity affect these rights?

As stated in Article IV of the Agreement of February 5, 1898 (31Stat. 674, 15 Stat. 673), between the United States and the Shoshone-Bannock Tribes, ratified by the Act of June 6, 1900: "So long as any of the lands ceded, granted and relinquished under this treaty remain part of the public domain, Indians belonging to the above-mentioned Shoshone-Bannock tribes, and living on the reduced Fort Hall reservation, shall have the right, without any charge therefore, to cut timber for their own use, but not for sale and to pasture their livestock on said public lands, and to hunt

thereon and to fish in the streams thereof.” These ceded lands occur on the Westside Ranger District of the CTNF; they do not include National Forest System lands within the Project Area.

Page 2.83. Cultural Resources. The Tribal DOE/Cultural Resources offices should be notified and involved in the initial and ongoing cultural resources management of the area.

Following the first consultation meeting on June 27, 2005, the Tribal cultural resource staff has been notified of survey work in the Project Area. Future survey and site work will be coordinated with the Tribal cultural resource staff.

Page 3-147. 3.9. Grazing Management. Again, there was not any mention of or proper consideration of Tribal grazing rights in the Affected Environment. This needs to be included in this section.

As stated in Article IV of the Agreement of February 5, 1898 (31Stat. 674, 15 Stat. 673), between the United States and the Shoshone-Bannock Tribes, ratified by the Act of June 6, 1900: “So long as any of the lands ceded, granted and relinquished under this treaty remain part of the public domain, Indians belonging to the above-mentioned Shoshone-Bannock tribes, and living on the reduced Fort Hall reservation, shall have the right, without any charge therefore, to cut timber for their own use, but not for sale and to pasture their livestock on said public lands, and to hunt thereon and to fish in the streams thereof.” These ceded lands occur on the Westside Ranger District of the CTNF; they do not include National Forest System lands within the project area.

Page 3-186. 3.13.1 Cultural Context. Please state that this section is based only on archaeological research and acknowledge that local Indian Tribes may hold other perspectives.

Editorial changes were made to the text in Section 3.13.1.

Page 3-187. 1.13.1. Protohistoric. The discussion presented in this section leads readers to believe that Shoshone and bannock peoples were only in the area sporadically. This is inaccurate. Please revise the paragraph. Native peoples, including ancestors of the Tribes, have an extensive history of this area, and have since time immemorial, utilized and roamed their aboriginal lands throughout this area, whether it was for subsistence hunting, fishing, gathering, medicinal and ceremonial purposes, warfare, transportation, or social purposes.

Comment noted. An addition to the text reads, “The Shoshone Bannock Tribes state that the ancestors of the Shoshone and Bannock peoples have an extensive history in southeastern Idaho and the project area. Their ancestors used present day southeastern Idaho for subsistence hunting, fishing, gathering, medicinal and ceremonial purposes, warfare, transportation, and social purposes.” This addition will be included under the heading “Archaic Period” after the existing last paragraph. The “Protohistoric” section will begin with the sentence, “Existing research and records indicate that two horse-owning groups may have passed through the Manning Creek tract during their annual forays. According to Stewart...”

Page 3-192. Heritage Resources, 1st paragraph, 2nd sentence. The second sentence needs to be revised. The Fort Bridger Treaty reserved already existing inherent rights; those resources have always been available to the Shoshone and Bannock peoples prior to the July 3, 1868 treaty.

Editorial changes were made to the text.

Page 3-193 3.14. Native American Concerns and Treaty Rights resources. Revise the 1st paragraph, 2nd sentence to read as follows: “The Federal agencies must consult at the government-to-government level, in accordance with federal laws, treaties, and executive orders.” The 2nd paragraph, 3rd sentence should

be removed. It is confusing and inaccurate. The Fort Bridger Treaty did not mention any comment requirement for proposed actions. The trust responsibility obligation needs to be included in this section.

Page 3-194. 3.14.1. Introduction, 1st Paragraph. Again, the sentence regarding the “establishment” of off reservation treaty rights is inaccurate. The Treaty reserved those already existing inherent rights for off reservation traditional activities; it did not “establish” nor “grant” those rights. The 2nd paragraph should be reviewed and revised to more accurately address the matter of the Northwestern Band of Shoshone and their off-reservation treaty rights under the Fort Bridger Treaty.

The noted edits were made. The text was edited to reflect that the Shoshone and Bannock peoples used the lands for subsistence hunting, fishing, and gathering prior to the 1868 Treaty, and those uses were reserved when the Treaty was signed.

Page 3.197. Recreation. The first paragraph is inaccurate. No identification of “Tribal traditional camping areas,” or have we stated otherwise. Please remove the sentence.

Editorial changes were made. The sentence was removed from the text.

Page 3.2-2. Section 3.162 Economic History. Again, the treaties did not establish the reservation here in Fort Hall; the Reservation was established by executive order. Include the following section: “The Fort Hall Reservation was created by Executive Order on June 14, 1867 and was established as a permanent homeland to Shoshone and Bannock peoples pursuant to the Fort Bridger Treaty of July 3, 1868. The original reservation was approximately 2 million acres, but by subsequent cessation agreements, the United States obtained land for non-Indian settlers, and the federal government. An 1888 executive Order ceded the Marsh Valley area for settlement, resulting in the loss of approximately 240,000 acres of Reservation lands. A June 6, 1900 Agreement with the Tribes ceded surplus lands resulting in the establishment of the City of Pocatello when approximately 419,000 acres of treaty-reserved lands were opened for settlement. The current fort Hall Indian Reservation is approximately 544,000 acres, which does not include recently acquired lands adjacent to the reservation.”

Section 3.16 was updated to include information regarding the establishment of Fort Hall Reservation.

Page 3.16.3 Land Ownership and Population. Include information on the Tribes for this section, such as land ownership, demographics, and analysis in this section. All this information is available from the Tribal TERO office or the Tribal Planning Office.

The Tribal TERO office, Tribal Museum, Tribal Selenium Department, and BIA were all contacted to gather additional demographic information regarding the Shoshone-Bannock Tribes. No information was provided.

Page 4.193, Section 4.14.1. Direct and indirect Impacts. The federal agencies do not “administer” treaty rights—the tribes do that. The federal agencies can protect, preserve, enhance, and uphold those treaty rights.

Editorial changes were made.

Page 4.198. Access to Treaty Resources. The discussion stated a local, short-term, minor to major adverse impacts to resource access for Treaty rights. What mitigations are being developed for the Tribes loss of access?

The project lies within lands traditionally and currently used by the Shoshone-Bannock Tribes. The 1868 Fort Bridger Treaty reserves certain rights for the tribes on unoccupied lands. During the course of the project, some active areas of the mine would be closed to protect the safety of

the public and tribal members. The loss of access for Tribal members would be temporary and variable throughout the Project Area during the life of the mine. The status of the land will not change from “unoccupied federal land” and therefore would be available for traditional and treaty rights uses except for those areas temporarily closed. Adjacent National Forest System lands, with similar resources and settings, would still be available for traditional and treaty uses by Tribal members. Simplot and the Shoshone-Bannock Tribes could reach agreements to mitigate the loss of access to portions of the project area while the mine is active and before reclamation. The Agencies have offered to facilitate any such meetings between the Tribes and Simplot.

Page 4.198. Recreation. The Tribes have not identified Tribal recreation sites. We do not recognize “Tribal recreational sites” as such. The section is inaccurate.

Editorial changes were made. This sentence was removed from the text.

Page 4.220. Section 4.14 Environmental Justice. The analysis presented in this section is inadequate for the determination of no effect. Reducing or limiting hunting and/or gathering opportunities affects the Tribes adversely, even if temporarily. Review and revise these consequences.

Sections 3.17 and 4.17 in the EIS on Environmental Justice were revised.

The Tribes greatly disagree with the ground water summary and modeling. The amount and extent of selenium contamination is greatly underestimated in both the summary and the modeling.

The Tribes also believe that the amount of selenium loading to all water features will be significant, far exceeding any water quality standard. Resulting in extensive impacts to all natural resources, water, soil, vegetation, wildlife and fish.

The Agencies believe the amount and extent of groundwater impact analyses in the DEIS is sufficient for the decisions proposed to date by the agencies for this project. We agree with the Tribes that more extensive and detailed work can be done, given more time and money. However, such additional work would not result in any changes to the conclusions already documented in the DEIS, i.e., mining alternatives A through C by themselves would not be in compliance with applicable standards due to their calculated impacts on groundwater and surface water quality. Likewise, additional modeling would also not change the Agencies’ selection of Alternative D, as part of the Preferred Alternative, with its mitigation of groundwater impacts through the use of a cover design that limits infiltration into the ROM overburden. The remaining question is how much infiltration through that cover should be allowable to maintain groundwater and surface water quality in the Project Area within applicable State and federal standards.

The analysis of surface water quality impacts in the EIS was based on scientifically sound methods that are conservative in nature. The methods and the degree of this conservatism are described in the groundwater impact section of the FEIS. The Agencies feel the analyses accurately estimate selenium loading.

The Tribes indicate that selenium loading to all water features will far exceed any water quality standard, resulting in extensive impacts to all natural resources. The impact analyses in the DEIS have indicated the concentrations of selenium calculated to occur in groundwater and surface water. The calculated impacts for the Agency Preferred Alternative (Alternative D) are within applicable State and federal water quality standards. The impacts of these water quality changes, as well as other environmental impacts from the proposed mining activities are described throughout the DEIS. The Agencies have used these impact descriptions and considered input

from the public comments on the DEIS to develop a slate of mitigation measures intended to reduce the environmental impacts to levels consistent with applicable federal and State requirements.

In section 5.15 the agency states that “the project would produce a local, temporary, and negligible impact to land access by Tribal members for exercising Treaty Rights,” the Tribes greatly disagree with this statement and request that it be removed from the document. Any loss of Treaty Rights is significant, irrelevant of its duration or location.

The analysis presented regarding the geographic distance from the Reservation to the Project Area is inaccurate and misleading. The Shoshone-Bannock Tribes exercise our rights to hunt, fish, and gather hundreds of miles away from the current Reservation, and geographic distance is inapplicable in this discussion. Please remove this from the document.

The EIS has been edited to reflect these concerns. The FEIS does not characterize the impacts to treaty rights as “negligible”. The Fort Hall Business Council has stated in consultation that they feel any impact to treaty rights is significant. CEQ guidance on conducting NEPA analyses requires the agencies to describe the context, duration, and intensity of the environmental impacts of a proposed action. This was done throughout the DEIS including Section 5.15 of the document. The Caribou National Forest and Grasslands include over 1,000,000 acres of largely undeveloped land, and most of these acres are available to practice treaty rights. The Project Area is 1,340 acres, or 0.13% of the land potentially available for Tribal use. Impacts to vegetation, wildlife, and other resource uses that the treaty allows are addressed in the individual resource sections of the EIS.

The physical effects of the mining disturbance itself, hence the physical surface resources affected by the disturbance will be localized to the disturbance footprint and is correctly described in the DEIS as being a very small part of the CEA for tribal treaty rights (Southeastern Idaho). This limited geographic impact is why the effect on tribal treaty rights was described as being local and negligible. The physical occupation of the Project Area by the proposed mining operations would be for a limited time and then the majority of the disturbance area would be reclaimed. This is why the impacts to tribal treaty rights are described as being temporary.

Review and revise the analysis presented in the Cumulative Effects section.

Page 5.51. This page discussed a scenario that was developed for cumulative analysis. Additional discussions with both Tribal staff and the Fort Hall Business council need to occur on this analysis.

The Cumulative Effects section regarding impacts to Tribal members was revised and additional information added. The Agencies welcome additional comments from the Tribes regarding cumulative effects of the project to Tribal interests and concerns.

Tribal Air Quality Comments on Smokey Canyon Mine Draft EIS

The proposed expansion of the mine area will increase the size of the open pits, drilling, blasting, loading, and hauling of ore and overburden all of which increase the particulate matter emissions and distribution of fugitive ore and overburden dust in the area. The net effect of the expansion is to increase the ambient levels of particulate matter, including PM-10 (a National Criteria Pollutant) in addition to the distribution of toxic-contaminated dust. The ore contains elevated levels of heavy metals, including Selenium, Cadmium, Copper, Zinc, Mercury, and Nickel in addition to the non-metal fluoride. These metals represent a risk of toxic contaminated dust. The ore contains elevated levels of heavy metals, including Selenium, Cadmium, Copper, Zinc, Mercury, and Nickel in addition to the non-metal fluoride. These

metals represent a risk of toxic contamination entering the environment. Studies have shown that Selenium which may be distributed through the air pathway are in concentrations exceeding the water quality standard in several locations which originated from existing mining operations and, since the air pathway is one of the principal distributive pathways to the environment, the final EIS should describe more mitigation alternatives to control fugitive dust from the project. The finer dusts created by mining activities renders them more soluble and consequently more subject to up-take in flora and fauna to result in adverse impacts to the environments and the Tribes' treaty rights in these area.

Smoky Canyon Mine is committed to using Best Management Practices (BMPs) to control fugitive dust from mining and transportation activities. Section 4.2.3 summarizes the basic mitigative activities that can control fugitive dust. Additional measures could include:

- ***Increased dust control can be achieved for all inactive sites and stockpiles through the use of stabilizers and suppressants.***
- ***Dust control for in-pit mining activities can include mine trenches cut to right angles of the prevailing wind direction.***
- ***Construction, transportation, and support vehicle speeds can be lowered and enforces to lessen the generation of fugitive dust.***
- ***Mining and transportation activities can be limited during high wind events.***
- ***For Alternative 7, increased dust control can be achieved using active track-out controls such as sweepers and truck wash down areas, prior to entering paved road surfaces.***

The Agencies believe that the dust control measures contained in Sections 2.5.2 and 4.2.3 are sufficiently effective in reducing fugitive dust.

Cumulative Effects

The Tribes have a direct experience with the toxic nature of the phosphate ore. The Record of Decision (ROD) from eastern Michaud flats site specifically references the contamination of soils caused by the ore, the same ore as that being mined at Smokey Canyon:

Under Section 5.6.1, data revealed that Soil Contaminants of Concern (COCs) are principally derived from phosphate ore (not process waste), which contains phosphorus, fluoride, arsenic, beryllium, cadmium, chromium, vanadium, zinc, uranium-238 (and its decay products), and other elements. The Remedial Investigation, as described in the Record of Decision (ROD) specifically mentions the fact that airborne materials from the ore result in contamination:

"Deposition of airborne materials such as cadmium, fluoride, radium, and zinc has occurred in the Plant and Off-Plant Areas since the Plants began operation."

The DEIS predicts the total LOM mass of fugitive dust likely to be emitted from all mining and transportation activities from the Proposed Action and Alternatives The high moisture content, annual precipitation, overburden cover, and snow cover naturally mitigates fugitive dust generation from the ore as it is mined and transported. Smoky Canyon Mine is committed to employing BMPs to control fugitive dust and is regulatory required to do so in their State of Idaho Air Permit.

Haul roads will be constructed of chert. Chert is generally low in COPC content. Movement of the ore from the mine panels to the mill will generate dust, but the amount of dust from the moist ore (greater than 12%) will be slight compared to that generated from the transportation (tire friction on road surface), which will be covered in chert.

Mercury has been found in ambient air quality filters from PM-10 Hi-Vol instruments in a Source Apportionment Study carried out down-wind from the Eastern Michaud Flats site, and later Mercury was found in fish tissue samples down-stream to result in a Fish-Advisory designation for the area. The dust from the various mine operations as a source of contamination of the area soils, and subsequently the water-bodies. Simplot has not adequately studied the risks from the contaminants of the ore, nor has the draft EIS adequately addressed the potential for adverse impacts from fugitive dust created in mining and transportation process at Smokey Canyon. This significantly contributes to the Tribes' position to oppose the expansion.

This chapter in the draft EIS, section 5.2, limits the discussion to air quality in the ambient air, as if the issue re-distribution and deposition does not occur. This needs to be revised in the final EIS to reflect the fact that re-distributed fugitive dust, because of the small size of dust particles, increases solubility of Selenium-bearing soils and heavy-metal bearing soils exposed to wind from mining activities resulting in additional threats to water quality and the ecosystem because they may be blown off-site carried into the streams and water-bodies and subsequently taken up through the food-chain. This source of contamination is an additional cumulative increase in environmental exposure to heavy metal and fluorides which was not covered in the draft EIS. In this way, the expansion proposal may cause a significant distribution of phosphate ore into the forest eco-system that results in heavy-metal (and fluoride) up-take into the flora and fauna which is subsequently taken up in the food-chain to result in toxic levels in some species, and possibly in humans. Wind-blown ore dust, because by definition they are the finer particles, are more susceptible to being carried by rains and snow-melt into streams and water-bodies, and because of the obvious risk that these dusts contain Selenium (and other metals) it is critical that the final EIS more systematically analyze the alternatives that would control and monitor fugitive dust. The above-described pathway is all but ignored in the draft EIS.

Applying the concentration of the elements listed above to these estimates may result in determination of how much deposition may occur. However, selenium, heavy metals, and fluorides in the ore and overburden are most likely bound into typical carbon and sulfide compounds. Major releases into the environment in its most toxic forms (vapor, elemental, or alkyls) are minimal. For instance, HgS is a stable form of mercury in an ore body; however total Hg analysis is a poor indicator of the toxic or environmental impacts.

Past monitoring results obtained from MSHA indicate that Simplot's Smoky Canyon Mine controls dust at the mine to well below the applicable nuisance dust Threshold Limit Values of 10 mg/M³. Using the highest concentration of total mercury concentration of 0.44 mg/Kg and the TLV of 10 mg/M³, the average Hg airborne concentration would be 0.000044 mg/M³. Based on the highest permissible airborne dust concentration, this level is 0.017% of the allowable ACGIH TLV for mercury (0.025 mg/M³). Without thermal or chemical processing of the fugitive dust generated, it has been estimated that more than half of the dust generated is larger than particulate matter greater than 10 microns in size. The majority of dusts generated from mining and transportation activities are likely to settle soon after generation. Selenium emissions may result in levels at 0.0005 mg/M³, with a TLV of 0.2 mg/M³; 0.25% of the TLV.

Previous HELP modeling has indicated that runoff from undisturbed areas at the mine sites is about 12 inches per year. For one acre of watershed, this would be approximately 43,560 cubic feet of water weighing a total of 43,560 cf x 62.4 lbs per cf = 2.718 E6 lbs. As determined above, the total amount of selenium in the dust released over the life of mine is 0.075 lbs per acre. The life of Panel G mining operations would be approximately eight years so the annual selenium fallout in dust per acre would be 0.075 lbs / 8 = 0.0094 lbs/ac/yr. When this selenium weight is divided by the weight of annual runoff per acre the concentration of selenium in this runoff can be estimated as: 0.0094 lbs Se / 2.718 E6 lbs water = 0.0034 ppm. This assumes 100% of all the selenium in the dust fallout would wash off each year in the runoff, which is quite conservative

because much of the dust would be entrained in the soil surface and not wash off with the runoff. It is safe to say that the estimated selenium concentration in the runoff from the dust fallout would be less than the 0.005 mg/L surface water standard for selenium and likely less than 0.002 mg/l.

Assuming the dust was 100% entrained in the soil profile so it could be potentially available for plant roots, the concentration of the selenium increase over the life of the mine in a 1-foot thick soil profile was estimated above as 0.017 ppm and 0.0085 ppm for a 2-foot thick soil profile. The USFS has determined that total selenium concentrations less than 13 ppm in soil are protective of vegetation against selenium bioaccumulation. Section 3.4, Soil, of the DEIS shows that most soil in the Project Area contains total selenium in non-detectable concentrations. It is clear that the increase in selenium within topsoil of the fallout area would be well less than the USFS guidance for acceptable selenium concentrations in soil.

We conclude from the above that the amount of selenium in the dust fallout from Panel G would present a negligible to minor impact to surface water quality, topsoil quality, or vegetation in the adjacent fallout area. This conclusion is also applicable for Panel F because, if the calculations were done, lower impacts would be estimated due to the calculated dust releases for Panel F being lower than Panel G. The same can also be said of the Panel G West Haul Road because the selenium concentration in the dust would be over an order of magnitude less than Panel G (1.5 mg/Kg v. 41.7 mg/Kg) and would be spread out over a larger fallout area than Panel G. This would result in significantly lower impact levels than are estimated herein for Panel G.

The following sentences from Section 4.41 (Page 4-89) should be deleted:

“Wind erosion is expected to be low to moderate due to the coarse characteristic soil features, such as the high percentage of coarse fragments throughout the soil profile. The wind erodibility hazard for the majority of soils within the Proposed Action and Alternatives area has been rated as moderate (Maxim 2004f).”

The assumptions used in the above-referenced assessments are false. That is, the above assessment may be true in un-disturbed soils, but it is wrong with respect to soils that are constantly being disturbed by crushing, transfers, backfilling and the transportation corridor effects, all of which result in reducing coarse fragments of soil material to fine material that is very susceptible to fugitive dust, re-suspension and wind erosion. The net result is that the Draft EIS may have significantly under-estimated the tonnage of fugitive dust disbursed as a result of the proposed project. This, in turn, may have resulted in a significant under-estimation of the ecological impacts and cumulative impacts of phosphate ore being carried off-site from mining and transportation activities. One must simply recall the effects of any dirt road or disturbed area where initially there is limited fine material and fugitive dust is often minimal, but over time and with repetitive truck traffic many roads turn the coarse particles to fine talcum-like dust that is readily blown to down-wind locations.

The wind erosion statement is accurate. Mining Alternatives B and C are the only two alternatives that involve double handling of overburden. Double handling of the ore is not proposed in the Agency Preferred Alternative. EPA approved emission factors (AP-42: 11.9-4, 13.2-4, 13.2.5) for disturbed and undisturbed overburden stockpiles and land were used to estimate the amount of emissions from these areas. Mitigative controls cited in Section 4.2.3 on all mining and transportation alternatives, such as magnesium chloride applications are designed to bind fine material into large material to prevent fugitive dust. The Agencies believe that the reasonably conservative parameters were used in emission calculations and the amount of fugitive dust is overestimated.

Several studies show that disturbed areas produce significantly more fugitive dust than undisturbed areas, and the Final EIS should incorporate a model that takes this into account. At least two studies show that this EIS should be modified to incorporate this fact: (Review of the Draft EIS for the Power River Basin Oil and Gas Project (WYO-070-02-065), January 2002, Wyoming State BLM Office.) The following document further explores the reason for the need to significantly change the draft EIS with respect to the issue of fugitive dust and the modeling of air quality and wind-erosion impacts:

WGA, 2001. Methodology for Estimating Fugitive Windblown and mechanically Resuspended Road Dust Emissions Applicable for Regional Scale Air Quality Modeling, Final Report for Western Governors Association, (WGA), April.

Estimates of total fugitive dust generated by disturbed land, roads, and stockpiles were calculated for the DEIS. Using the best applicable emission factors approved by EPA, the amount of emissions generated from these activities were calculated for the Preferred Alternative and Proposed Action.

The above-reference methodology, or other scientific model that takes into account mechanically resuspended road dust should be employed in the final EIS to assist in estimating emissions from the mining processes at proposed mines. As a result of this, all the chapters that discuss wind-erosion, air quality impacts, cumulative impacts, monitoring, and mitigation should be changed to reflect the impact of road and mine dust from the proposed operations.

See above responses.

The following sentence from Section 5.2 (Page 5-7) should be deleted:

“Cumulative effects of dust emissions from the mines operating in southeast Idaho is not expected because all mining must be done in compliance with IDEQ regulations requiring application of dust control BMPs and adherence to permit conditions that ensure protection of air quality”

The sentence is not factual for several reasons: (1) Simply because the IDEQ regulates air quality does not mean that air quality problems won't occur. EPA designated the Portneuf PM-10 Non-attainment area after decades of air quality control by IDEQ including permitted sources. (2) Violators may elect to pay fines rather than install particulate controls that comply with the regulations; and (3) The IDEQ regulations and permits are not directed at deposition of heavy metals, yet deposition may be a primary source of adverse off-site impacts to the eco-system from this activity. But it is not enough to delete the above sentence; the Final EIS should make a real effort to discuss fugitive dust impacts and provide additional alternatives that provide controls of mine dust, and the future monitoring of mine dust. It is also imperative that the final EIS discuss the cumulative effect of toxic ores being blown off the construction and transportation areas, where it is solubilized, and readily transported by rains, and snow melt into the area water-bodies to cause additional transfer of Selenium and other toxics into the food-chain and ecosystem.

IDEQ has authority to regulate and enforce the Clean Air Act and its' amendments. Smoky Canyon Mine's Air Permit and the State Implementation Plan are the issued regulatory documents that prohibit Smoky Canyon Mine from discharging emissions beyond a specific limit or to violate any Federal Statues of the Clean Air Act. Portneuf PM-10 Non-attainment area is mainly due to milling and manufacturing processes. It is not within our scope of work to determine if entities regulated by IDEQ do or will comply with the regulatory authority. See Selenium response in above portion of letter.

Also, the additional ore and overburden-based wind-blown dust distributed through the air pathway as the result of additional mining and transportation activity results in deposition into forested areas, which in turn increases the toxic make-up of any resultant fires, whether they are prescribed or wild-fires and this

increases the adverse cumulative effect of the mining activity, because it distributes the toxic contaminants to more wide-spread areas. Finer particle size, as created by repetitive crushing of ore dust by haul trucks and other heavy equipment from the mine process may increase the survey area of the particles which in turn exposes metal compounds of the ore in such a way that they may undergo oxidation/reduction reactions, which may result in heavy-metals such as Selenium to be in a more toxic oxidative state than raw ore. These issues should be raised in the final EIS, and a mitigation plan should be included that addresses these issues, if the project is approved.

The maximum concentration of mercury, selenium, and fluorides are calculated in third response in this letter. Using the most toxic form of each, the TLV (8-hour exposure) is still a tenth of a percent lower than the standard.

In addition, it is possible that selenium contained in or on vegetation could volatilize and be driven off in a gaseous state, thus reducing the amount of available selenium in the environment and not increase it.

The cumulative effect of developing and using new roads increase the chances of destructive fires starting in these areas. Sparks from chain saws and mufflers have been shown to increase the chances of fires in areas that were otherwise roadless. The cumulative affect of such fires is not discussed in the draft EIS. What fire fighting capacities are available to Simplot, and what methods are to be employed to minimize the chance of fires? These are questions that must be addressed. Once a fire has occurred across the transportation area, or across the mine, the open burn areas that contain phosphate ore are significantly more susceptible to prevailing winds, and the ore contamination may be spread farther into the forest system. This, in turn, increases these exposed areas to water erosion and water contamination from run-off in those areas. The final EIS should not only address this issue in the alternative section but also in the "cumulative affects" and "mitigation" sections.

Cumulative effects from increased fire potential have not been evaluated. The Project Area lies within a high priority response area; therefore any fire occurrence would be suppressed quickly and would likely not be over 10 acres. The Forest Service has fire suppression staff. Further, the mine has some fire suppression capability on site.

In addition to the above referenced air quality-based recommendations on cumulative effects, the final EIS should also more adequately address the over-all cumulative effects of this expansion, in the context of the existing and proposed mine impacts. That is, the draft EIS fails to adequately address the cumulative effects of this proposal in combination with the existing Smoky Canyon Mine, and the associated contamination; and the proposed manning creek and Deer Creek Mine, and the Wells Canyon phosphate lease area the adjoins the Deer Creek lease and which Simplot is currently conducting exploration drilling on with the intention of future development.

Mitigation

Because of the threat of adverse impacts from re-distributed ore and overburden wind-blown dust, the Final EIS should include an alternative to require all haul-trucks and conveyor belts, to be covered in order to prevent excess fugitive dust. Also the final EIS should include an alternative that sets out a specific fugitive dust prevention plan, particularly for the transportation corridor and all ore and overburden transfer points. Water sprays and dust suppressants should be required. The technology is readily available and the costs to implement this alternative are small compared to the benefits.

Monitoring

The final EIS should be modified, so that if the expansion is approved, Simplot should fund an independent contractor to operate PM-10 air quality monitors at downwind locations. The filter-based monitors should be routinely analyzed for heavy metals, radionuclides and fluorides with the laboratory results evaluated as part of a risk assessment and the need for additional studies associated with the expansion into the national forests. Because distribution of fugitive dust increases water quality

contamination, the draft EIS should further document the plan that Simplot will employ to monitor in the watershed of these new panels.

It is beyond the scope of EIS to propose who monitors dust. Text was added to mitigative measures (Section 4.2.3) that PM-10 monitors may help in monitoring and thus reduce fugitive dust.

The Tribes continue to request 100% reclamation of the site. Removal of all buildings and structures associated with this proposal. Removal of all external dumps and overburden piles. Removal of all highwalls and pits, as well as roads and staging areas. Revegetation of the entire disturbed acreage including roads and staging areas.

One hundred percent reclamation is not reasonably feasible, and with some transportation alternatives, not preferable. Portions of some haul roads could be left partially reclaimed in order to benefit the forest road system. See Sections 2.6 and 2.7. Mining Alternative C analyzed the impacts of requiring 100 percent backfill of all overburden material. The Preferred Alternative would approve 89 percent backfill and about 96 percent reclamation, most of the remainder is exposed highwall.

In conclusion, the Tribes do not support this project and are adamantly opposing the agencies approval of mining Panels F & G for the purpose of extracting ore at the Smoky Canyon Mine. However, if the agencies continue to pursue approval of mining Panels F& G at the Smoky Canyon Mine, the Tribes request that the Tribal comments, objections, and concerns be reflected in the final EIS, and further that these issues are properly addressed by the federal agencies reviewing the proposal. To summarize, the subject areas of concern include, but are not necessarily limited to, the following:

1. Building permits

Addressed above.

2. Air Quality

Addressed above and in Sections 3.2 and 4.2 of EIS.

3. Timber sales/distribution

Typically timber is appraised then sold to the mining company. They determine the timing of timber removal and distribution of timber once purchased and harvested.

4. Loss of access

Addressed above and in Sections 3.14 and 4.14 of EIS.

5. Loss of wildlife, fish, and plants

Loss of wildlife, fish, and plants are discussed in Sections 4.7, 4.8, and 4.5 respectively in the EIS.

6. Loss of culturally significant areas, including but not limited too, flora and fauna, vistas, and usual and accustom places for traditional and ceremonial activities

Loss of culturally significant areas is addressed in Section 4.14.1 of the EIS.

7. We are also requesting that the Shoshone Bannock Tribes be listed on all bonds, and financial assurances retained in conjunction with the proposed project of extracting ore from Panels F & G at the Smoky Canyon Mine

Bonding is required by the Mineral Leasing Act under 43 CFR 3504.50. As the authorizing agency, BLM holds the bond for the on-lease operations and Forest Service, as the authorizing agency of the Special Use Permits, holds the bond for those areas under permit outside of the leases. The bonds are held so that in the event of a default, the authorizing agencies have the financial means to complete reclamation.

8. Off-site mitigation measures and funding sufficient to support effective measures.

No additional mitigation beyond that which is protective of resources will be required.

Thank you for the opportunity to be active participants in the NEPA process and we admire the work the Agencies and contractors have devoted to Tribal concerns. We look forward to your timely response regarding these comments.

Sincerely,

Blaine J. Edmo, Chairman
Fort Hall Business Council

Cc: Fort Hall Business Council
Land Use Policy Commission
Roger Turner, Tribal Air Quality Program
Yvette Tuell, Fisheries Environmental Program Manager
Claude Broncho, Tribal Fisheries Department
Iralene Osborne, Tribal Mining Oversight Manager
Kelly Wright, Tribal CERCLA/RCRA Program Manager
Christina Cutler, Selenium Program Manager
Candon Tanaka, Tribal Water Quality Program
Jason Pappani, Tribal Water Quality Program
Jeff Jones, Acting Soda Springs, District Ranger
Philip Damon, BLM Pocatello Field Office Manager
Tribal Attorneys Office
Paul EchoHawk, Special Tribal Council

6.4 Lists of Preparers and Reviewers

Lead Agency: Bureau of Land Management (BLM), Pocatello Field Office

Joint Lead Agency: Caribou-Targhee National Forest (CTNF/USFS), Montpelier Ranger District

Cooperating Agency: Idaho Department of Environmental Quality (IDEQ)

Interdisciplinary Team (IDT) and Technical Specialists:

EIS Project Manager, Geologist: Bill Stout, BLM (previously James Blair)

ID Team Leader, Geologist: Scott Gerwe, USFS

Mining Engineer, Geologist: Jeff Cundick, BLM

Forest Planner, Litigation Coordinator: Robbin Redman, (previously Cheryl Probert), USFS

Montpelier District Ranger: Dennis Duehren, USFS

Archaeologist: Ali Abusaidi, USFS

Botanist: Rose Lehman, USFS

Civil Engineers: Leon Bleggi, Randy Tate, USFS

Engineer: Peter Werner, USFS

Fisheries Biologists: James Capurso, Louis Berg, USFS

Forester: Wayne Beck, USFS

Geologist: Jeff Jones, USFS

Hydrologist: James Laprevote, USFS

Hydrologist: Lee Leffert, USFS

Landscape Architect: Debrah Tiller, USFS

Range Conservationist: Heidi Heyrend, USFS

Regional Office Groundwater Program Lead: Joe Gurrieri, USFS

Soil Scientist: John Lott, USFS

Washington Office Groundwater Program Lead: Chris Carlson, USFS

Wildlife Biologist: Ann Keysor, USFS

Regional Mining Coordinator: Mary Kauffman, IDEQ

Civil Process Engineer: Mark Clough, IDEQ

Hydrogeologist: Gerry Winter, IDEQ

Simplot Corporation

EIS Project Manager: Lori Hamann

Smoky Canyon Mine General Manager: Dennis Facer

Smoky Canyon Mine Engineer: Scott Lusty

Smoky Canyon Mine Engineer: James Louis

Smoky Canyon Mine Engineer: Chris McCourt

Senior Environmental Manager: Bruce Winegar

THIRD PARTY CONTRACTOR – JBR ENVIRONMENTAL CONSULTANTS, INC.		
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ASSISTANT PROJECT MANAGER Inventoried Roadless Area Transportation	Greg Brown JBR Salt Lake City	BS Natural Resources 13 Years Experience
EDITOR Visual Resources/Recreation	Linda Matthews JBR Salt Lake City	BS Environmental Studies 22 Years Experience
DOCUMENT CONTROL Cultural Resources Treaty Rights	Jenni Prince Mahoney JBR Salt Lake City	BS Anthropology MC NEPA 14 Years Experience
Wildlife/Fisheries/TES/BA/BE	Eric Holt JBR Salt Lake City	MS Wildlife Management BS Wildlife Resources 12 Years Experience
Air Quality/Noise	Erin Hallenburg, EIT JBR Salt Lake City, UT	BS Biology BS Civil Engineering 18 Years Experience
Socioeconomics	Allan Isaacson University of Utah Salt Lake City	BS Mechanical Engineering MBA 17 Years Experience
Mining Engineering/Reclamation	Bill Fuller JBR Salt Lake City, UT	MS Systems Management BS Mechanical Engineer 32 Years Experience
Administrative Assistant	Heather Haan JBR Salt Lake City, UT	3 Years Experience
Soils	Karen Kinsella JBR Elko, NV	BS Resource Management, Soils AS Biology/Computer 8 Years Experience
Surface Water Hydrology Land Use	Karla Knoop, CPH JBR Price, UT	BS Watershed Science 23 Years Experience
Infiltration Modeling	James Kunkel Knight Piesold	PhD Water Resources MS Civil Engineer BSCE Civil Engineer 35 Years Experience
Ground Water, Geochemistry, and Modeling	Alan Mayo PhD Alan Mayo Associates Orem, UT	MS Geology BS Geology PhD Hydrogeology 27 Years Experience
Graphics	Connie Pixton JBR Salt Lake City, UT	34 Years Experience

THIRD PARTY CONTRACTOR – JBR ENVIRONMENTAL CONSULTANTS, INC.		
Vegetation	Greg Sharp JBR Salt Lake City, UT	BS Fisheries & Wildlife Biology 12 Years Experience
Geochemistry	Ron Schmiermund, PhD Knight Piesold	PhD Geochemistry MS Geochemistry BS Geology 28 Years Experience
Wetlands/Riparian	Dave Worley JBR Reno, NV	MS Zoology BS Biology 20 Years Experience
Fisheries and Aquatics	Peter Chapman, PhD Golder Associates Ltd. North Vancouver, B.C., Canada	PhD Benthic Ecology MS Biological Oceanography BS Marine Biology 30 Years Experience

SIMPLOT BASELINE CONTRACTOR – MAXIM TECHNOLOGIES, INC.		
Project Manager	Terry Grotbo Maxim Helena, MT	BS Earth Science 28 Years Experience
Water Resources	Doug Rogness Maxim Helena, MT	MS Hydrology BS Geology 19 Years Experience
Geochemistry	Lisa Kirk Maxim Bozeman, MT	BS Geology 14 Years Experience
Vegetation	Holly Beck Maxim Boise, ID	MS Botany BS Ecology 8 Years Experience
Wildlife Wetlands/Riparian Aquatics/Amphibians	Walt Vering Maxim Boise, ID	MS Natural Resources BA Biology 8 Years Experience
Soils	Judd D. Stark Maxim Boise, ID	BS Land Rehabilitation/Soil Science 6 Years Experience
Cultural Resources	Dale Gray Frontier Historical Consultants	MA History BA History 20 Years Experience
Land Use, Access, Recreation, and Grazing	Joseph N. Murphy Maxim Helena, MT	BA Geography 31 Years Experience

6.5 Mailing Lists

6.5.1 Mandatory Mailing List

The following mandatory mailing list was compiled using both Forest Service and Bureau of Land Management mandatory distribution lists. The number in parenthesis is the number of hardcopies required.

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ARMY CORPS OF ENGINEERS (2) NORTHWESTERN DIVISION CHIEF, PLANNING DIVISION 1125 NE COUCH ST. , STE. 500 PORTLAND, OR 97209-4141	NATIONAL MARINE FISHERIES SERVICE (*) HABITAT CONSERVATIONISTS DIVISION NORTHWEST REGION 525 NE OREGON 1201 NE LLOYD BLVD., STE 1100 PORTLAND, OR 97232-1274	US DEPT OF THE INTERIOR (5) DIRECTOR, OFFICE OF ENVIRONMENTAL POLICY AND COMPLIANCE 1849 C STREET, NW MAIN INTERIOR BLDG, MS-2340 WASHINGTON D.C. 20240
BUREAU OF RECLAMATION (2) DENVER FEDERAL CENTER BLDG. 67 (D-5000) P.O. BOX 25007 DENVER, CO 80225-0007	NATIONAL PARK SERVICES (4) ENVIRONMENTAL QUALITY DIVISION 1201 EYE STREET NW WASHINGTON D.C. 20005	US DEPT OF THE INTERIOR (3) NATURAL RESOURCES LIBRARY 1849 C. STREET NW WASHINGTON D.C. 20240
ENVIRONMENTAL PROTECTION AGENCY (5) OFFICE OF FEDERAL ACTIVITIES, EIS FILING STATION AIREL RIOS BLDG (S OVAL LOBBY) RM 7220 1200 PENNSYLVANIA AVE. NW WASHINGTON D.C. 20004	NATURAL RESOURCES CONSERVATION SERVICE (*) NATIONAL ENVIRONMENTAL COORDINATOR US DEPT OF AGRICULTURE P.O. BOX 2890, ROOM 6158-S WASHINGTON D.C. 20013-2890	US DEPT OF THE INTERIOR (1) OFFICE OF EXTERNAL AND INTERGOVERNMENTAL AFFAIRS 1849 C STREET NW WASHINGTON DC 20240
ENVIRONMENTAL PROTECTION AGENCY (2) REGION 10 ATTN: LYNNE MCWHORTER 1200 SIXTH AVENUE, ETPA-088 SEATTLE, WA 98101	OFFICE OF DEPUTY A/S OF THE USAF (1) ENVIRONMENT, SAFETY, AND OCCUPATIONAL HEALTH SAF/RQ ROOM 4C916, PENTAGON WASHINGTON, D.C. 20330-0001	US DEPT OF THE INTERIOR FISH & WILDLIFE SERVICE (3) ASSISTANT DIRECTOR, ENDANGERED SPECIES 1849 C ST. NW WASHINGTON D.C. 20240
FEDERAL AVIATION ADMINISTRATION (*) NORTHWEST MOUNTAIN REGION REGIONAL ADMINISTRATOR 1601 LIND AVENUE, SW RENTON, WA 98055-4056	US COAST GUARD (*) ENVIRONMENTAL MANAGEMENT CG-443 2100 2ND STREET, SW WASHINGTON, D.C. 20593	USDA, NATIONAL AGRICULTURAL LIBRARY (1) HEAD, ACQUISITIONS & SERIALS BRANCH 10301 BALTIMORE BLVD., RM 002 BELTSVILLE, MD 20705
FEDERAL HIGHWAY ADMINISTRATION (*) IDAHO (HDA-ID) DIVISION ADMINISTRATOR 3050 LAKEHARBOR LN, # 126 BOISE, ID 83703-6243	USDA APHIS PPD/EAD (*) 4700 RIVER ROAD, UNIT 149 RIVERDALE, MD 20737-1238	(*) – no hardcopy needed, will access from the web
FORT HALL BUSINESS COUNCIL SHOSHONE-BANNOCK TRIBES (1) P.O. BOX 306 PIMA DRIVE FORT HALL, ID 83203	US DEPT OF ENERGY (2) OFFICE OF NEPA 1000 INDEPENDENCE AVE. SW MAIL CODE EH-42, ROOM 3E094 WASHINGTON D.C. 20585	
HQ-USAF/LEEVE (2) ENVIRONMENTAL DIVISION BOLLING AFB, BLDG. 516 WASHINGTON D.C. 20330-5000	US DEPT OF THE INTERIOR (3) MINERALS MANAGEMENT SERVICE CHIEF, ENVIRONMENT OPS AND ANALYSIS BRANCH 381 ELDON STREET HERNDON, VA 20170-4817	

6.5.2 Interested Parties Mailing List

The Interested Parties mailing list is divided into Federal agencies, State agencies, and others. This list was compiled through agency maintained lists, the previous Simplot Smoky Canyon Mine Project Panels B & C mailing list, the scoping process, and comments received on the DEIS. As stated previously, 38,616 responses were received by the end of the DEIS comment period. Of these, 1,055 were substantive comment letters; these were added to the mailing list. The remaining 37,561 responses were form letters and are included in the administrative record. The number in parenthesis is the number of hardcopies required.

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BUREAU OF LAND MANAGEMENT IDAHO FALLS DISTRICT (1) JOE KRAAYENBRINK, DISTRICT MANAGER 1405 HOLLIPARK DRIVE IDAHO FALLS, ID 83401-2100	ENVIRONMENTAL PROTECTION AGENCY (1) IDAHO OPERATIONS OFFICE 1435 N. ORCHARD STREET BOISE, ID 83705	USFS GREY'S RIVER RANGER DISTRICT (1) P.O. BOX 339 AFTON, WY 83110
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3286 HWY 30
SODA SPRINGS, ID 83276

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PAXTON WOLFLEY
75722 HWY 89
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