**State Comments on Draft Action Memo for Manila Lode/Toledo Tunnel Mine and Mill Site**

**5/25/21**

**Comment 1**: p. 5, section I(A)(3) (Site Characteristics). Please specify whether waste rock piles and the proposed drainage channel are located on public (USFS) or private lands. Also, please specify how many different private owners exist in these areas. This information will inform decisions regarding post removal site controls described in Comment 2.

**Comment 2**: p. 9, Section V(A)(1)(Proposed Action Description). Please add language to this section addressing post removal site controls in the form of environmental covenants (ECs) or restrictive notices (RNs). Pursuant to the attached April 15, 2019 *Agreement Regarding Colorado Environmental Covenants Statute*:

For time critical or non-time critical removal actions where waste is left in place above levels determined by EPA to be unsafe for unrestricted use or where the selected remedy incorporates an engineered feature or structure that requires monitoring, maintenance, or operation that will otherwise not function as intended if disturbed, *the EC statute will be identified as an ARAR and an element of post-removal site control* . . .

(emphasis added). As explained in the State ARARs table, the evapo-transportative cover and lined drainage channel are engineered features. The consolidated waste rock pile is also an area where waste will remain above unrestricted use standards. An EC or RN will be required to protect these features and any other area within the Site where engineered components exist or where waste is left in place above unrestricted use standards.

**Comment 3**: p. 9, Section V(A)(4)(ARARs). This section states, “[a]s this action is being conducted as a time-critical removal, all federal and state ARARs may not have been identified at this time.” Please remove this sentence. Nothing in NCP provides an exception to identifying ARARs for Time Critical Removal Actions prior to the action memo. Only emergency removal actions allow for post-action ARARs identification and other documentation.