

**MEMORANDUM OF UNDERSTANDING**  
**between**  
**USDA-FOREST SERVICE REGION 4,**  
**ENVIRONMENTAL PROTECTION AGENCY REGION 10,**  
**USDOJ (BUREAU OF LAND MANAGEMENT,**  
**BUREAU OF INDIAN AFFAIRS, AND FISH AND WILDLIFE SERVICE),**  
**THE SHOSHONE-BANNOCK TRIBES, and**  
**STATE OF IDAHO DIVISION OF ENVIRONMENTAL QUALITY**  
**concerning**  
**CONTAMINATION FROM PHOSPHATE MINING OPERATIONS**  
**IN SOUTHEASTERN IDAHO**

**PARTIES:**

This Memorandum of Understanding (MOU) is entered into by and between the following governmental entities (Parties):

- The United States Department of Agriculture, Forest Service (Forest Service)
- The United States Environmental Protection Agency (EPA)
- The United States Department of Interior, Bureau of Land Management (BLM)
- The United States Department of Interior, Bureau of Indian Affairs (BIA)
- The United States Department of Interior, Fish and Wildlife Service (USFWS)
- The State of Idaho, Department of Health and Welfare, Division of Environmental Quality (IDEQ)
- The Shoshone-Bannock Tribes (Tribes)

The FS and BLM are hereafter collectively referred to as the "Federal Land Management Agencies." The FS, EPA, BLM, BIA and USFWS are hereafter collectively referred to as the "Federal Agencies."

For purposes of this MOU the Parties designate the individuals identified in Appendix A or their successors as general contacts for issues relating to this MOU

## RECITALS

- A. Elevated concentrations of selenium and other hazardous substances, pollutants and contaminants have been identified in water, soil, and vegetation associated with current or former phosphate mining operations in southeastern Idaho.
- B. The approximate extent of currently known past and present phosphate mining operations is indicated on the map attached hereto as Exhibit 1 (the "Mining Area"), and includes areas located variously on federal land, tribal land, private land, state land, or a mixture of these types of ownership or jurisdictional areas. Individual phosphate mining operations located within the Mining Area are listed in Exhibit 1. The Parties reserve the right to amend Exhibit 1 as necessary upon mutual agreement in light of information received or developed pursuant to this MOU.
- C. A number of the Federal Agencies already have incurred and will incur costs in responding to the release and threat of release of hazardous substances in the Mining Area. It is anticipated that all the Parties eventually will incur such costs during the pendency of this MOU.
- D. The Federal Agencies have referred matters subject to this MOU to the U.S. Department of Justice ("DOJ") Environmental Enforcement Division for possible litigation and/or concurrences that may be required by Executive Order 12580, as well as for assistance in negotiations.
- E. Phosphate Mine Owners and Operators in the Mining Area ("Companies") may be liable for performing response actions and/or for response costs incurred and to be incurred by the "Parties" in responding to releases or threatened releases of hazardous substances within the Mining Area, and/or for natural resource damages.
- F. In July 1998, the Forest Service negotiated an Administrative Order on Consent ("AOC") with one of the Companies for completion of a Site Investigation ("SI") and an engineering evaluation/cost analysis (EE/CA) at South Maybe Canyon.

## STATEMENT OF PURPOSE:

- G. The Parties acknowledge their overlapping authorities and interests in this matter and the complexity of mixed-ownership and jurisdictional issues in the Mining Area. The Parties intend in this MOU to provide a framework for the coordination of their actions and authorities to:

- 1) Ascertain the overall extent of the contamination present in and around historic and ongoing phosphate mining operations in the Mining Area;
  - 2) Define specific sites for focused investigation and response action;
  - 3) Establish overall priorities for the investigation and response action process in order to protect human health and the environment;
  - 4) Undertake investigations and response actions in a manner that will allow the Parties to recover response costs.
  - 5) Promote future mining operating practices that will safeguard the environment from future contamination; and
  - 6) Negotiate agreements or enter into contracts consistent with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, under which the Companies or contractors hired by one of the parties to this MOU will undertake appropriate investigation and response actions in connection with selenium and other contamination within the Mining Area ("Agreements").
- H. The Parties agree that they will work together to integrate procedures and substantive requirements for these various tasks under their respective asserted authorities, and to resolve any conflicts among them, in order to minimize duplication of efforts and assure effective and efficient response actions.
- I. The Parties also will work together in the exercise of their respective authorities in the Mining Area, to ensure compliance with applicable federal, state, local and tribal laws, including but not limited to the legal authorities listed for each Party in Appendix B hereto.
- J. The Parties similarly will work together in the exercise of their respective authorities in the Mining Area, and in accordance with the provisions of CERCLA and the NCP, to preserve their respective rights and interests concerning potential natural resource damage claims arising from injuries to natural resources in the Mining Area.
- K. The Parties also agree that it is important to communicate a single set of instructions to the Companies following consultation among themselves, and it

is important to develop and adhere to an agreed-upon communications plan in connection with their efforts under this MOU.

- L. This MOU is an agreement between the Federal Agencies, the State and the Tribes, and is not intended to control the relationship among the Federal Agencies.

**AUTHORITIES:**

- M. Each party asserts it has authority to enter into this Agreement and to respond to releases of hazardous substances within the Mining Area, as set forth in the Statement of Legal Authority attached hereto as Appendix B and incorporated as part of this MOU. By entering into this MOU, the Parties do not waive any of their respective authorities or concede authorities or jurisdiction asserted by other Parties. Nothing in this MOU shall be construed to restrict, enlarge, or otherwise determine the rights, interests, and jurisdiction of the United States, the State of Idaho, or the Tribes, or any of their respective departments or agencies.

**AGREEMENTS:**

**A. Task Identification**

- 1. The Parties agree to work together to establish criteria for defining the scope of an area-wide investigation, selecting specific sites for additional investigation or for response actions, and selecting a lead agency to oversee the site-specific response actions under Agreements with the Companies.
- 2. The Parties agree that an area-wide investigation should be conducted either by IDEQ or under an Agreement with one or more of the Companies.
- 3. The Parties agree that decisions concerning the particulars of how they should define the area-wide investigation, identify specific sites for additional investigation or response action, select a site-specific lead agency, identify support agencies, or otherwise implement their commitment to work together under this MOU will be made by a committee consisting of those persons identified in Appendix A, or their designee.

**B. Identification of Lead and Support Agencies**

- 4. For the area-wide investigation and for each specific site identified by the Parties for additional investigation or response action ("Site"), the Parties will

cooperatively identify a Lead and any Support Agencies having an interest at the Site. The designation of an agency as Lead Agency shall not exempt that agency from any access or regulatory requirements applicable to land under the jurisdiction, custody, or control of another Party.

5. IDEQ has been designated the Lead Agency with respect to the area-wide investigation.
6. The Parties agree that the existing AOC for South Maybe Canyon is not affected by or subject to this MOU, with the exception of Paragraph 11 hereof. With respect to any additional Agreements that may be entered into concerning South Maybe Canyon, the Forest Service will remain the Lead Agency. Other Parties may act as Support Agencies pursuant to the terms of this MOU for such subsequent Agreements.
7. The Lead Agency and Support Agencies identified for a Site will negotiate one or more Agreements with the Company or Companies having responsibility for the Site. It is contemplated that Lead and Support Agencies for a Site will mutually determine an approach regarding Agreements appropriate for a particular site. Examples of alternative approaches include:
  - a. A single Agreement with a Company, signed by the Lead and Support Agencies;
  - b. The Lead Agency and a Support Agency entering into separate Agreements with a Company, with the work undertaken based on a single mutually agreed statement of work (SOW); or
  - c. Only the Lead Agency entering into an Agreement with the Company.

In all cases agency coordination would continue, as provided in this MOU.

**C. Information Sharing and Coordination**

8. The State shall supply an On-Scene Coordinator ("OSC") or Remedial Project Manager ("RPM"), who will have the duties described in the NCP, to oversee the area-wide investigation and the main point of contact for the Federal Agencies and the Companies.
9. The Lead Agency for each Site will supply an OSC/RPM to oversee the implementation of any investigations or response actions undertaken pursuant to

any Agreements between the Lead and Support Agencies and the Companies, and the main contact point for the Support Agencies and the Company or Companies involved.

10. For both the area-wide investigation and for each site-specific investigation and response action, each Support Agency will designate a Project Manager ("Project Manager").
11. The OSC/RPM will share information and coordinate with the Project Manager(s) during both the area-wide investigation and all site-specific investigations and response actions, as follows:
  - a. The OSC/RPM will provide the following to the Project Manager(s):
    - i. Copies of documents related to the investigation, analysis of alternatives, and response action design and implementation, including drafts of documents identified in Paragraphs 14 and 15 of this MOU.
    - ii. Reasonable prior notice of, and an opportunity to participate in, any meetings, conference calls, or other scheduled contacts with the Companies.
    - iii. Reasonable prior notice of activities to take place in connection with the area-wide investigation or at a specific Site.
  - b. The OSC/RPM and the Project Manager(s) will communicate regularly, by phone, correspondence, and meetings, to review the work status and to address any existing or anticipated technical issues.
  - c. The Project Manager(s) will advise the OSC/RPM regarding any issues and concerns of special interest to the Project Manager(s), in addition to those described in this MOU, so that the OSC/RPM can communicate or provide requested information to the Project Manager(s).
12. The Project Manager(s) will use best efforts to provide comments to the OSC/RPM within 21 days of the Project Manager's receipt of a deliverable from the Companies or a request for concurrence pursuant to Paragraphs 14 and 15 of this MOU. If a Project Manager determines that additional time is required to provide comments, the Project Manager will discuss the need for a reasonable amount of additional time (normally 15 days, or less) with the OSC/RPM, as soon as that need is identified.

13. The OSC/RPM will communicate the joint responses of the Parties to the Company(ies).

D. Concurrences

14. With respect to the area-wide investigation, the State, as the Lead Agency, will request concurrence from each Support Agency on a set of decision points to be established by the Signatory Committee or their designees, including but not limited to the following documents or their equivalents:

annual work plans  
overall investigation plan  
study identification  
sampling and analysis plans  
study completion reports  
changes to statement of work  
quality assurance plan  
health and safety plan  
risk assessment work plan  
draft risk assessment  
final risk assessment

15. With respect to site-specific work, the Lead Agency will request concurrence from each Support Agency on the following decision points:
- a. The Work Plan for the Site investigation and analysis of alternatives. Under CERCLA the analysis of alternatives would be contained within an EE/CA or a Remedial Investigation/Feasibility Study ("RI/FS");
  - b. The Health and Safety Plan;
  - c. The Community Relations/Public Involvement Plan;
  - d. Decisions concerning the need for additional data collection and/or any decision to cease data collection;
  - e. The final site investigation report;
  - f. The final human health and/or ecological risk assessments;
  - g. The final analysis of alternatives;

- h. Each proposed or final response action decision, such as a draft or final action memorandum or a Proposed Plan or Record of Decision ("ROD");
- i. Deliverables from a Company under an Agreement to implement any response action; and
- j. Any decisions pertaining to potential injury to natural resources.

E. Dispute Resolution

16. Resolution of and communication regarding legal issues will be coordinated among appropriate counsel for the Parties and, as appropriate, DOJ attorneys. The legal contacts for the Parties are as follows:

USDA - Attorney, United States Department of Agriculture, Office of General Counsel, James Alexander (or successor or designee)

DOI/BLM/BIA/FWS - Primary Contact: Attorney-Advisor Office of Solicitor, Branch of Federal Facilities Compliance John Seymour; , Supporting Contacts: Attorney-Advisor, Division of Mineral Resources Harvey Blank; Attorney-Advisor, Division of Indian Affairs Jean Rice; Attorney-Advisor, Division of Parks and Wildlife John Carlucci; or Attorney-Advisor from DOI Regional or Field Solicitor's Office (or their respective successors or designees)

EPA - Assistant Regional Counsel, EPA Region 10, Elizabeth McKenna (or successor or designee)

DOJ - Senior Attorney Region 10, Environmental Enforcement Section, Deborah M. Reyher, Ben Franklin Station, P.O. Box 7611, Washington, D.C. 20044, (202) 514-4113 (or successor or designee)

Idaho - Administrator, Waste Management & Remediation Division, Idaho Department of Environmental Quality. (or successor or designee)

Tribes - Special Counsel, Attorney's Office, Shoshone-Bannock Tribes, Jeanette Wolfley (or successor or designee)

17. With respect to both the area-wide investigation and the site-specific investigations and response actions, the Parties will use their best efforts to resolve technical disagreements informally among the OSC/RPM and the Project Manager(s).

18. If the OSC/RPM and the Project Manager(s) do not reach agreement through informal means, the Parties will use the following dispute resolution process:
- a. Project Manager(s) and the OSC/RPM for the agencies involved at the site will quickly elevate any unresolved dispute, first to the persons identified in Appendix A, and up through the following management personnel (or their designees):
    - Forest Service Region 4 Deputy Regional Forester
    - The BLM Idaho State Office Director
    - EPA Region 10 Unit Manager of the Office of Environmental Cleanup, Ann Williamson
    - Program Administrator, Solid Waste Management Program, Idaho Department of Environmental Quality
    - USFWS - Regional Director
    - Chairman, Shoshone-Bannock Tribes' Land Use Commission
    - BIA - Deputy Commissioner
  - b. If the Parties continue to disagree, the Lead Agency will prepare a proposed written decision which fully evaluates and addresses the expressed concerns of the Support Agencies, and the matter will be elevated to a committee consisting of the signatories to this MOU, or their successors or designees (the "Signatory Committee").
  - c. If the Signatory Committee cannot reach agreement then the Supporting Agencies may: 1) accept the proposed decision of the Lead Agency; 2) seek mediation or further elevation through a process agreed upon by the disagreeing Agencies; or 3) rely on their respective rights and authorities under Paragraphs 4, 22-27 of this MOU. An unresolved disagreement at one site or on one issue does not require the withdrawal of a Party or termination of the entire MOU. If a disagreement is confined to one site or issue, coordination actions at other sites and on other issues will continue as specified in this MOU. Likewise, disagreement at one site or on one issue will not affect previous agreements reached at other sites or on other issues or prevent the enforcement of agreements at the subject site that became effective before the time of disagreement.

- d. To avoid impeding work, the time for resolving disputes among the Parties must be short. When informal dispute resolution between the OSC/RPM and Project Manager(s) does not rapidly resolve a dispute, the OSC/RPM and the Project Manager(s) should elevate the dispute through management within 10 days. The Parties should resolve disputes or issue a decision within 21 days of elevation. In exigent circumstances, any Party may immediately elevate a dispute directly to the Signatory Committee.
19. Work will continue during dispute resolution, except for work that is the subject of or dependent upon the outcome of the pending dispute and that may be delayed without posing an imminent and substantial endangerment to human health, welfare, or the environment.
  20. The dispute resolution process described in Section E of this MOU is separate from any dispute resolution process that may be described in an Agreement with a Company or Companies. If applicable, the Parties shall implement the dispute resolution process under such Agreements as follows:
    - a. The Lead Agency will propose an initial response to disputes raised by the Company, for concurrence by the Support Agencies.
    - b. If the Lead Agency and one or more of the Support Agencies cannot reach agreement as to how to respond to the dispute raised by the Company, a Support Agency may invoke the dispute resolution process under Section E of this MOU, unless the issue has already been disputed separately under this MOU. If the two dispute resolution processes are proceeding simultaneously, the dispute resolution process with the Company may not reach a final decision in a manner inconsistent with the MOU dispute resolution process.

**F. CONFIDENTIALITY**

21. The Parties recognize that to effectively and efficiently exercise their authorities concerning the Mining Area, their counsel, employees, and consultants may exchange documents and information subject to attorney-client privilege, attorney work product and other forms of privilege. The Parties, therefore, agree to protect these privileges, to the full extent provided by law. This provision shall remain in effect after this MOU terminates.

**G. RESERVATION OF RIGHTS**

22. The Federal Agencies reserve the right to exercise their rights and authorities under applicable law, including but not limited to, CERCLA, the NCP, and applicable Executive Orders, including Executive Order 12580, as amended and the Mineral Leasing Act, 30 U.S.C. sec. 181 et seq., including but not limited to, 30 U.S.C. § 211, and the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 et seq.
23. IDEQ reserves the right to exercise its rights and authorities under applicable law, including but not limited to, CERCLA, the NCP, the Idaho Environmental Protection and Health Act ("EPHA"), Idaho Code §§ 39-101 to 39-130, and the Hazardous Waste Management Act of 1983 ("HWMA"), Idaho Code §§ 39-4401 to 39-4432.
24. The Tribes reserve the right to exercise their rights and authorities under applicable law, including but not limited to, CERCLA, their inherent sovereign powers, the Fort Bridger Treaty, the Constitution and Bylaws of 1936, and various provisions of the Land Use Policy Ordinance, the Law and Order Code of 1982, and the 1994 Fort Hall Water Rights Agreement.
25. This MOU is not intended to affect, and the Parties hereby expressly reserve, any and all claims or potential claims each may have arising from injuries to natural resources in the Mining Area.
26. No statements made in the course of negotiations among the Parties or in this MOU may be construed to represent an admission, determination, settlement, or adjudication of any legal or factual dispute relating to any Party's rights, privileges or interests.
27. Each Party expressly reserves the right to assert any and all defenses it may have to any claim that may be asserted by the other Parties or by any other person under federal, state, or tribal law.
28. Nothing in this MOU is intended either to create any rights in or grant any cause of action to any person not a party to this MOU or to release or waive any claim, cause of action, demand, or defense in law or equity that any of the Parties to this MOU may have against any person(s) or entity not a party to this MOU.
29. This MOU is not a fund obligating document. Any reimbursement or contribution of funds between the Federal Agencies that have signed this MOU will be handled in accordance with applicable law and procedures. Such

reimbursement or contribution shall be authorized in separate written agreements signed and approved by the appropriate agency officers or representatives pursuant to appropriate statutory authority. No provision of this MOU shall be interpreted or construed as a commitment or requirement that any of the Federal Agencies obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law, in any fiscal year for actions subject to this agreement.

H. GENERAL PROVISIONS

30. This MOU is effective upon the date signed by the last of the Parties.
31. This MOU terminates 10 years after its effective date. Prior to that, this MOU may be terminated, modified, or extended upon the written agreement of the Signatory Committee. A Party may terminate its participation in this MOU upon 14 days written notice to all Parties.

**MEMORANDUM OF UNDERSTANDING**  
**concerning**  
**SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO**

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE

By:   
for Jack A. Blackwell  
Regional Forester  
U.S.D.A. Forest Service, Region 4

June 15, 2000  
DATE

**Memorandum of Understanding Concerning  
Contamination from Phosphate Mining  
Operations In Southeastern Idaho**

MEMORANDUM OF UNDERSTANDING  
concerning  
SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO

ENVIRONMENTAL PROTECTION AGENCY

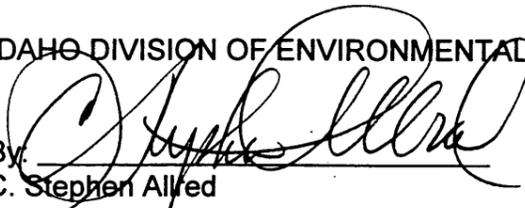
By:

  
Mike Gearhard  
Hazardous Waste Division Director  
EPA Region 10

5 July 2000  
DATE

**MEMORANDUM OF UNDERSTANDING**  
**concerning**  
**SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO**

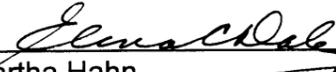
IDAHO DIVISION OF ENVIRONMENTAL QUALITY

  
By: \_\_\_\_\_  
C. Stephen Alfred  
Director  
Idaho Department of Environmental Quality

June 30, 2000  
DATE

MEMORANDUM OF UNDERSTANDING  
concerning  
SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO

UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF LAND MANAGEMENT

By:   
for Martha Hahn  
Idaho State Director  
Bureau of Land Management

  
DATE

**MEMORANDUM OF UNDERSTANDING**  
concerning  
**SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO**

UNITED STATES DEPARTMENT OF INTERIOR  
FISH AND WILDLIFE SERVICE

Acting

By: \_\_\_\_\_

*[Signature]*  
Anne Badgley  
Regional Director  
USFWS Region 1

JUL 14 2000

\_\_\_\_\_  
DATE

**MEMORANDUM OF UNDERSTANDING**  
concerning  
**SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO**

UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS

By: \_\_\_\_\_

(need title)  
Bureau of Indian Affairs

\_\_\_\_\_  
DATE

Memorandum of Understanding Concerning  
Contamination from Phosphate Mining  
Operations In Southeastern Idaho

*Page 17 of 24*

**MEMORANDUM OF UNDERSTANDING**  
**concerning**  
**SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO**

UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS

By: *Sharon Blackwell*  
Deputy Commissioner of Indian Affairs  
Bureau of Indian Affairs

*July 17, 2000*  
DATE

MEMORANDUM OF UNDERSTANDING  
concerning  
SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO

SHOSHONE-BANNOCK TRIBES

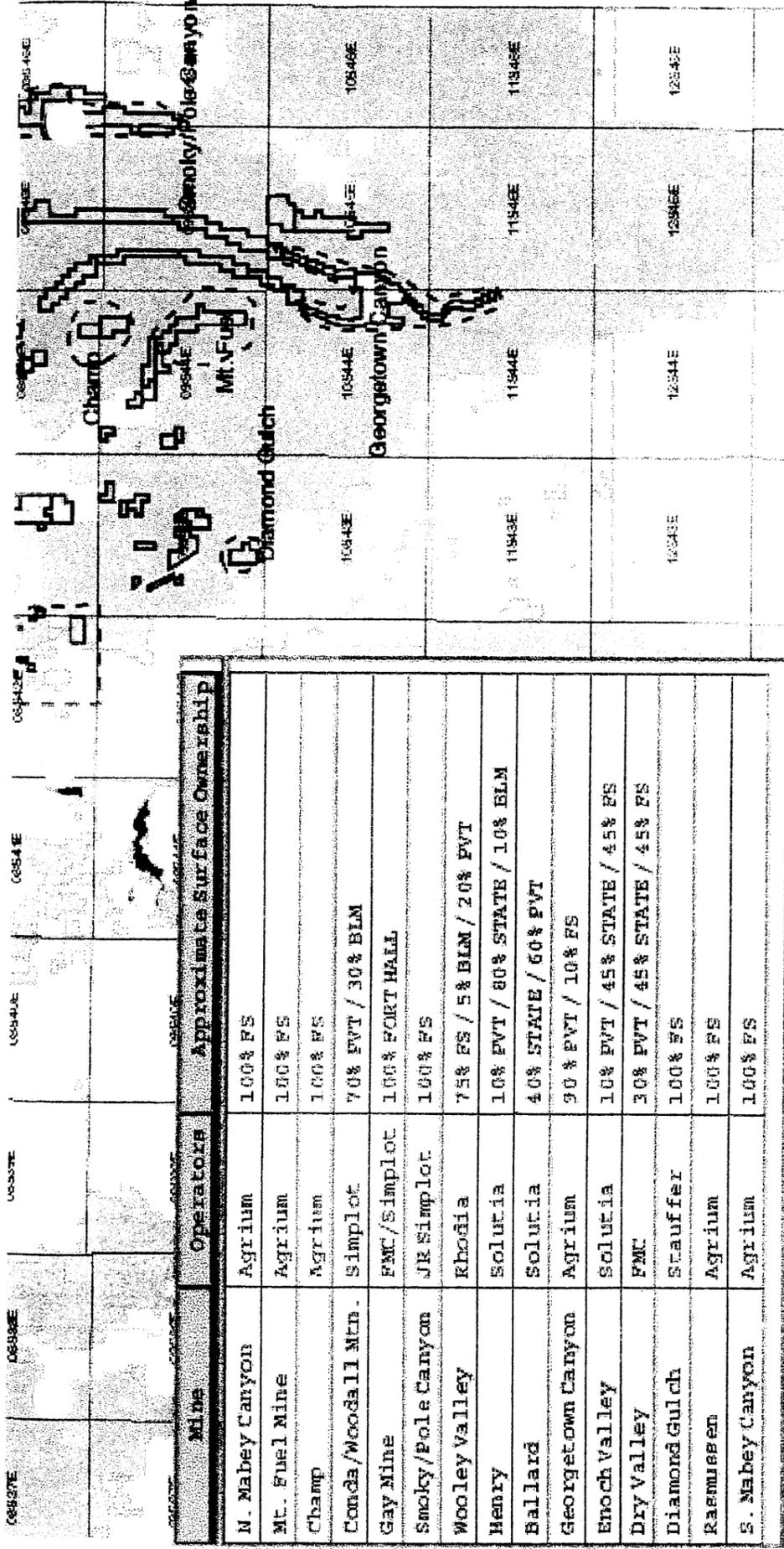
By: Claudio M. Broncho  
Claudio Broncho  
Vice Chairman, Fort Hall Business Council

6-17-00  
DATE

EXHIBIT 1

MEMORANDUM OF UNDERSTANDING  
concerning  
SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO





Mine	Operator	Approximate Surface Ownership
N. Mabey Canyon	Agrium	100% FS
Mt. Fuel Mine	Agrium	100% FS
Champ	Agrium	100% FS
Conda/Woodall Mtn.	Simplot	70% PVT / 30% BLM
Gay Mine	FMC/Simplot	100% FORT HALL
Smoky/Pole Canyon	JR Simplot	100% FS
Woolley Valley	Rhodia	75% FS / 5% BLM / 20% PVT
Henry	Solutia	10% PVT / 80% STATE / 10% BLM
Ballard	Solutia	40% STATE / 60% PVT
Georgetown Canyon	Agrium	90% PVT / 10% FS
Enoch Valley	Solutia	10% PVT / 45% STATE / 45% FS
Dry Valley	FMC	30% PVT / 45% STATE / 45% FS
Diamond Gulch	Stauffer	100% FS
Rasmussen	Agrium	100% FS
S. Mabey Canyon	Agrium	100% FS

### MOU Concerning Selenium Contamination in Southeast Idaho Exhibit 1

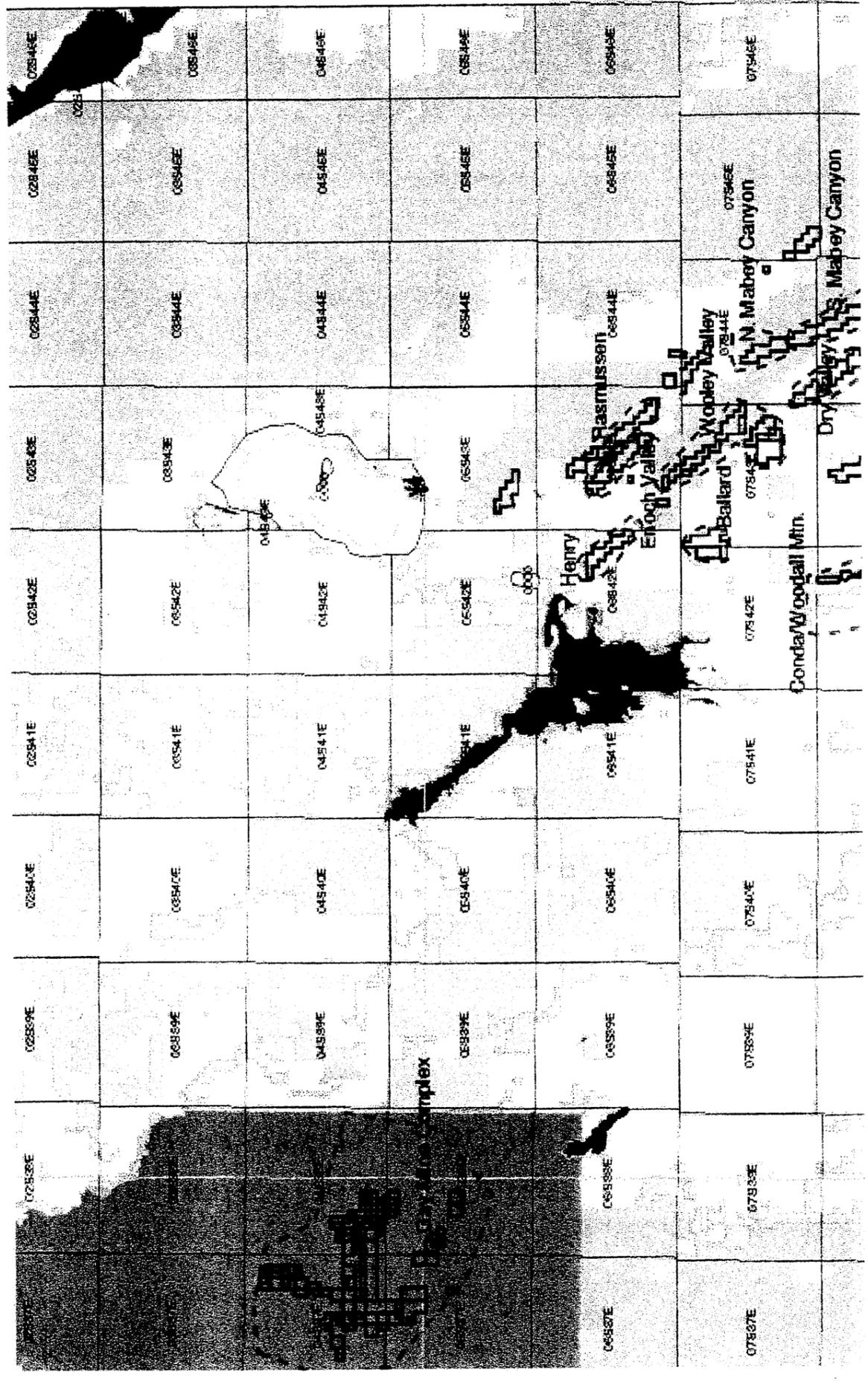
- Mine Leases
- Township Range Boundaries
- Land Ownership
  - B.L.M.
  - Fort Hall Reservation
  - Caribou National Forest
  - Private
  - State
  - Open Water

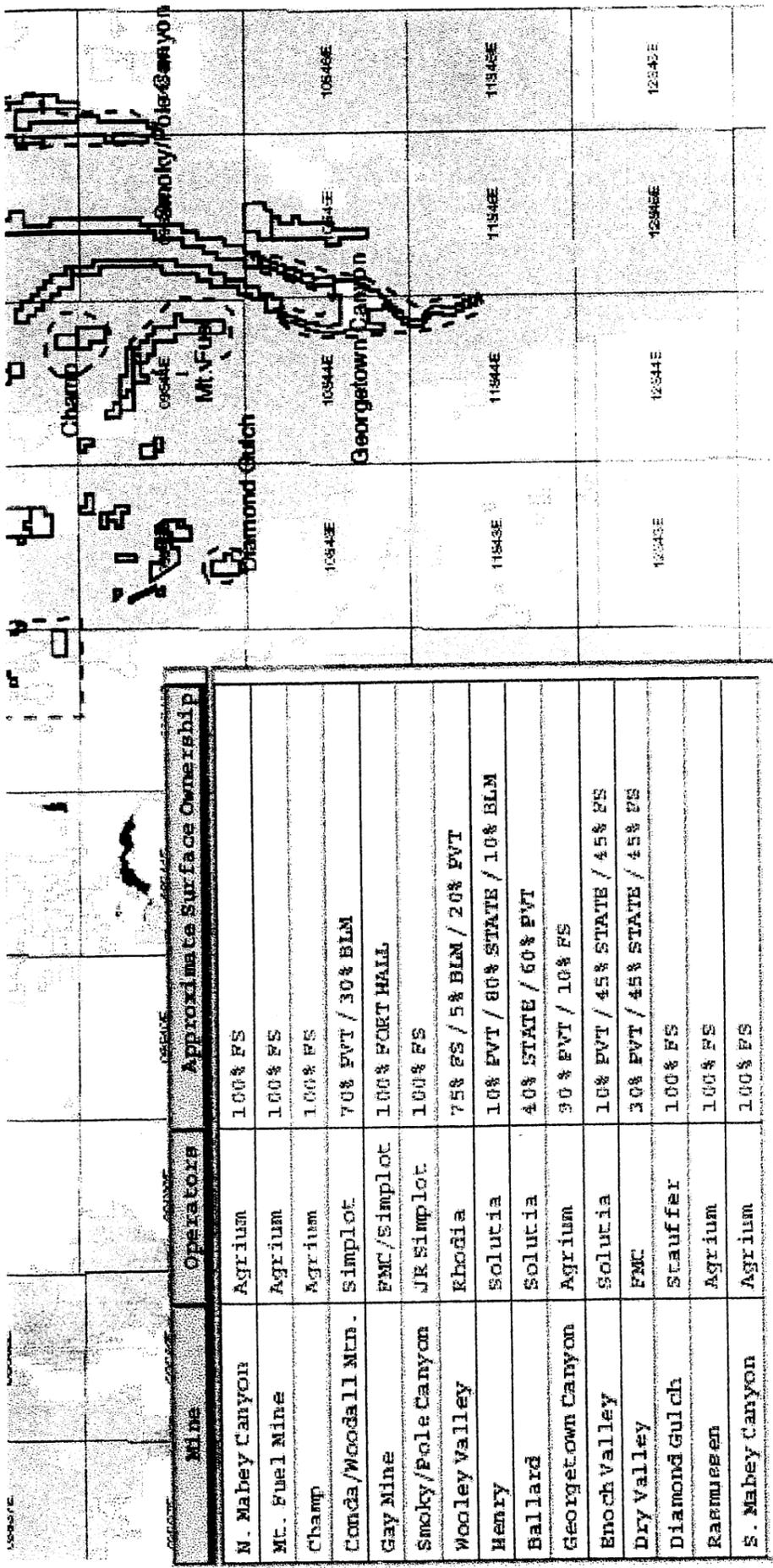


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# Southeast Idaho Phosphate Mine Sites for Selenium Investigations

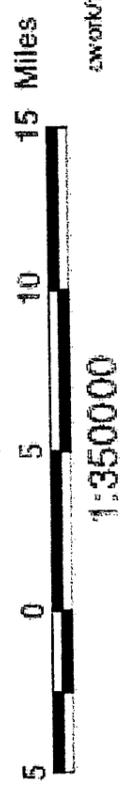




Mine	Operator	Approximate Surface Ownership
N. Mabey Canyon	Agrium	100% FS
Mt. Fuel Mine	Agrium	100% FS
Champ	Agrium	100% FS
Conda/Woodall Mtn.	Simplot	70% PVT / 30% BLM
Gay Mine	FMC/Simplot	100% FORT HALL
Smoky/Pole Canyon	JR Simplot	100% FS
Woolley Valley	Rhodia	75% FS / 5% BLM / 20% PVT
Henry	Solutia	10% PVT / 80% STATE / 10% BLM
Ballard	Solutia	40% STATE / 60% PVT
Georgetown Canyon	Agrium	90% PVT / 10% FS
Enoch Valley	Solutia	10% PVT / 45% STATE / 45% FS
Dry Valley	FMC	30% PVT / 45% STATE / 45% FS
Diamond Gulch	Stauffer	100% FS
Rammegen	Agrium	100% FS
S. Mabey Canyon	Agrium	100% FS

MOU Concerning Selenium Contamination in Southeast Idaho  
Exhibit 1

- Mine Leases
- Township Range Boundaries
- Land Ownership
- B.L.M.
- Fort Hall Reservation
- Caribou National Forest
- Private
- State
- Open Water



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**APPENDIX A**

**MEMORANDUM OF UNDERSTANDING  
concerning  
SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO**

For the purpose of this MOU The Parties designate the following persons, or their successors or designees, as general contacts for issues relating to this MOU:

USDA/Forest Service - Forest Supervisor of the Caribou-Targhee National Forest (currently Jerry Reese , 420 North Bridge Street, St. Anthony, ID 83445, (208) 624-3151)

DOI/BLM - District Manager, Upper Snake River District (currently Jim May 1405 Hollipark Driver, Idaho Falls, ID 83401, (208)524-7500.

BIA - Land Manager (currently Jeffery Loman [add address and phone])

USFWS - Supervisor, Eastern Idaho Field Office (currently Michael J. Donahoo, 4425 Burley Dr., Suite A. Chubbuck, ID 83202)

EPA - Nick Ceto, 1200 Sixth Avenue, ECL 116, Seattle, WA 98101, (206) 553-1816

DOJ - Senior Attorney, Region X, Environmental Enforcement Section (currently Deborah Reyher), Ben Franklin Station, P.O. Box 7611, Washington, D.C. 20044, (202) 514-4113)

IDEQ - Katherine Kelly, Administrator, Waste Management & Remediation Division, 1410 N. Hilton, Boise, ID 83706, 208-373-0445

TRIBES - Jeanette Wolfley, Tribal Attorney, Shoshone-Bannock Tribes, P.O. Box 306, Fort Hall, ID 83203, (208) 232-1922

APPENDIX B

MEMORANDUM OF UNDERSTANDING  
concerning  
SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO

STATEMENT OF AUTHORITY<sup>1</sup>

1. Pursuant to CERCLA, the President is responsible for responding to releases of hazardous substances, or pollutants and contaminants, to protect the public health or welfare or the environment. The President's CERCLA response authority is generally delegated to EPA. 42 U.S.C. 9601 et seq.; Executive Order 12580, §§ (2)(g) & 4(d)(1)&(2).
2. Pursuant to Executive Order 12580, as amended by Executive Order 13016, the President delegated the authority to conduct various activities under CERCLA, including investigations and response activities (42 U.S.C. § 9604), cost recovery (42 U.S.C. § 9607), issuing such orders as may be necessary to protect public health or welfare or the environment (42 U.S.C. § 9606(a)), and entering agreements with a potentially responsible party ("PRP") for the PRP to perform investigations (42 U.S.C. § 9622(d)(3)) to several executive departments and agencies, including the Environmental Protection Agency ("EPA"), the United States Department of Agriculture ("USDA"), and the United States Department of the Interior ("DOI").
3. USDA is generally delegated the President's CERCLA authority where a release of a hazardous substance is on, or the sole source of the release is from, a facility under the jurisdiction, custody or control of an agency within the USDA.

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<sup>1</sup> Each of the Parties to the Memorandum of Understanding Concerning Selenium Contamination in Southeastern Idaho executed in June 2000 (MOU) has submitted a Statement of Authority as set forth herein pursuant to Paragraph M of the MOU. This Appendix to the MOU does not constitute an agreement among the parties nor have any legal significance separate and apart from its incorporation by reference in the MOU. No statements or assertions contained herein shall be construed to restrict, enlarge, or otherwise determine the rights, interests and jurisdiction of the United States, the State of Idaho, or the Shoshone-Bannock Tribes, or any of their respective departments, agencies or members. Nor shall any statements made herein be construed to represent an admission, determination, settlement or adjudication of any legal or factual dispute relating to any Party's rights, privileges, interests, authority or jurisdiction.

Executive Order 12580, §§ 2(e)(1) and 4(b)(1). The Forest Service administers National Forest System land on behalf of the public. With certain limitations, USDA delegated its CERCLA authority to the Forest Service where a release of a hazardous substance is on, or the sole source of the release is from, a facility under the jurisdiction, custody or control of the Forest Service. Executive Order 12580, §§ 2(e)(1) and 4(b)(1); 7 C.F.R. § 2.60(a)(39). Executive Order 13016 amends EO 12580 to authorize USDA's use of CERCLA Section 106 authority to address releases or threats of releases of hazardous substances affecting lands and natural resources under the Forest Service's trusteeship, jurisdiction, custody or control, subject to the concurrence of the Administrator of EPA. The CERCLA roles of USDA and the Forest Service are also recognized in various provisions of the NCP. 40 C.F.R. Part 300.

4. DOI is generally delegated the President's CERCLA authority where a release of a hazardous substance is on, or the sole source of the release is from, a facility under the jurisdiction, custody or control of an agency within DOI. Executive Order 12580, §§ 2(e)(1) and 4(b)(1). The CERCLA roles of DOI are also recognized in various provisions of the NCP. 40 C.F.R. Part 300. DOI has re-delegated its authorities under Executive Order 12580 to the Bureau Directors with respect to land, resources, and facilities within the jurisdiction, custody, or control of the Bureaus including BLM and BIA. Executive Order 13016 amends EO 12580 to authorize DOI's use of CERCLA Section 106 authority to address releases or threats of releases of hazardous substances affecting lands and natural resources under DOI's trusteeship, jurisdiction, custody or control, subject to the concurrence of the Administrator of EPA. The Secretary of the Interior also has authority to lease phosphate deposits of the United States and lands containing such deposits pursuant to the Mineral Leasing Act, 30 U.S.C. sec. 181 et seq. and to manage public lands pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 et seq. These authorities have been implemented by BLM, on behalf of the Secretary, through regulations contained in 43 C.F.R. Parts 3500 and 3590. DOI is also a trustee for natural resources, and USFWS is responsible for the protection and restoration of trust resources injured by uncontrolled releases of hazardous materials. USFWS also is responsible for conducting assessments to establish injury and the dollar equivalent of that injury for collection of damages from parties responsible for releasing hazardous materials. In addition to the authorities stated in Paragraphs 1 and 2, supra, USFWS participates in this MOU based on the following authorities: CERCLA Section 122(j), 42 U.S.C. § 9622(j); the Endangered Species Act of 1973, 16 U.S.C. §§1531-1544; the Migratory Bird Treaty Act of 1918, 16 U.S.C. §§ 703-712; the Bald Eagle Protection Act of 1940, 16 U.S.C. §§ 668-668d; the Fish and Wildlife Coordination Act, 16 U.S.C.

§§ 661-667e; and the National Wildlife Refuge System Administration Act of 1966, 16 U.S.C. §§ 668dd-668ee.

5. IDEQ is the Idaho State agency that generally has authority over the identification, investigation and clean-up of facilities where hazardous substances have come to be located in the State of Idaho. IDEQ exercises this authority pursuant to the Idaho Environmental Protection and Health Act ("EPHA"), Idaho Code §§ 39-101 to 39-130, and the Hazardous Waste Management Act of 1983 ("HWMA"), Idaho Code §§ 39-4401 to 39-4432. IDEQ is also the Idaho State agency with the authority to participate in the initiation and development of CERCLA response actions to be undertaken in the State of Idaho.
  
6. The Shoshone-Bannock Tribes ("Tribes") are federally recognized Indian tribes with a governing body known as the Fort Hall Business Council, which has authority to enter into this MOU on behalf of the Tribes. The Tribes, on July 3, 1868, concluded the Second Treaty of Fort Bridger with the United States, which was ratified by the United States Senate on February 24, 1869. 15 Stat. 673. Article 4 of the Fort Bridger Treaty reserved the Fort Hall Indian Reservation ("Reservation") as a "permanent home" for the signatory Tribes. Article 4 reserved off-Reservation hunting, fishing and gathering rights to the Tribes; these Treaty-guaranteed rights are exercised on public lands throughout the State of Idaho. The Tribes are obligated to protect both the individual and communal interests of the successors-in-interest of Indian signatories to the Treaty, and are responsible to protect the health, welfare and safety of Tribal members, and the environment of the Tribes. The Tribes have authority over the identification, investigation, and cleanup of hazardous substances found within Indian Country, including on the Reservation, and retain protectable Treaty interests in public lands and water located off-Reservation that may be affected by hazardous substances or pollutant and contaminants. The Tribes exercise their authority pursuant to, among other authorities, CERCLA, their inherent sovereign powers, the Fort Bridger Treaty, the Constitution and Bylaws of 1936, and various provisions of the Land Use Policy Ordinance, the Law and Order Code of 1982, and the 1994 Fort Hall Water Rights Agreement. The Tribes anticipate finalizing a Hazardous Waste Management Act in 2000.