



IN REPLY REFER TO
BIA Northwest Regional Office

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Northwest Regional Office
911 NE 11th Avenue
Portland, Oregon 97232-4169

AUG 29 2018

Jamie Connell
BLM Oregon-Washington State Director
1220 Southwest 3rd Avenue
Portland, Oregon 97204

Dear Ms. Connell,

On January 8, 2018, President Trump Signed H.R. 1306, the Western Oregon Tribal Fairness Act (WOTFA) into law. Title I of this act, the "Cow Creek Umpqua Tribe Conveyance", mandated that the Secretary of the Interior (Secretary) transfer 17,519 acres of land formerly managed by the Bureau of Land Management (BLM) to be held in trust for the exclusive and beneficial use of the Cow Creek Band of Umpqua Tribe of Indians (Tribe). The lands were subsequently transferred into trust for the Tribe on July 19, 2018. It is worth noting that H.R. 1306 did not specifically include considerations for the transfer of contaminated lands into trust.

Umpqua Mine- Abandoned Mine Lands Site

During a May 2018 site visit, BLM indicated to BIA staff (the Bureau) that the Umpqua Mine, an abandoned mercury mine that operated from 1918 to the 1940s, was located within the Tribe's WOTFA boundaries approximately 30 miles southeast of Roseburg, Douglas County, Oregon (Township 29S, Range 2W, Section 34). The site is listed in BLM's Abandoned Mine Lands (AML) database and the Oregon Department of Environmental Quality (ODEQ) Environmental Cleanup Site Information (ECSI) database.

BLM's 2018 Engineering Evaluation and Cost Analysis (EE/CA)¹ for the site indicated that contaminants of concern (COCs) remain onsite at concentrations exceeding both BLM recreational visitor Screening Levels (SLs) and ODEQ's Risk-Based Concentrations (RBCs). This includes mercury and arsenic contaminated fine-grained process equipment residuals, soil, debris, waste rock stockpiles, and fuel tank-related petroleum contaminated soil.

Joint Meeting

On July 13, 2018, a meeting took place at the BLM offices in Roseburg, Oregon to discuss the site and the proposed contractor cleanup options. Attendees included Jason Robison, Cow Creek Tribe's Natural Resources Director, Kathy Stangl, BLM Deputy State Director for Resources, John Barber, BLM Hazmat/Abandoned Mine Lands Program Lead, Doug Cox, BLM Senior Environmental Risk Assessor/Toxicologist, Bodie Shaw, BIA Deputy Director Trust Services, Brian Haug, BIA Northwest Regional Scientist, EE/CA Contractor, Paul Hunter and Associates, Alexandra James, Attorney, for the DOI Office of the Solicitor, and other key BLM staff.

¹ Umpqua Mine Engineering Evaluation/Cost Analysis Report, Douglas County, Oregon, Applied Intellect, BLM Contract: L16PX01354, January 2018.

During the meeting, Applied Intellect (AI), BLM's contractor, summarized the EE/CA report and discussed five potential removal action alternatives to manage existing onsite mine waste and petroleum contaminated soil. AI recommended the following (EE/CA Sections 7.3.3 & 8):

Alternative 3 – Remove Waste Materials to an On-Site Repository, Cap and Revegetate: Waste rock, processed ore and soil that exceed applicable criteria and all debris would be excavated and consolidated in a newly constructed repository near the existing debris stockpile. Material that exceeds the criteria will be placed separately in a part of the repository for later covering by liner. The entire repository will be capped with a 2- to 3-foot thick soil cover. The repository will be revegetated with fertilizer and a BLM-approved seed mix. The fuel oil tank will be cleaned, cut up, and transported to a metal recycling facility. Petroleum sludge and contaminated soil will be properly disposed of at an approved off-site facility.

Discussion

As noted above, *Alternative 3* would leave contaminated material onsite in an onsite repository that exceeds acceptable clean up levels. In addition, the EE/CA notes that the repository would require perpetual monitoring and maintenance to prevent growth of large trees and tree roots from penetrating/compromising the cap's integrity. Once compromised, Tribal members engaged in traditional hunting, fishing and gathering activities in the area would potentially be exposed to harmful contaminants.

BIA and BLM are committed to protecting the human health, environment, watershed resources used for sustenance, and trust assets of the Tribe. Based on this, the institutional controls and limited remediation of the Umpqua Mine site materials proposed in *Alternative 3* would not be acceptable. BIA as with the BLM, supports a comprehensive and complete cleanup alternative that renders the area as close to its natural background condition as possible, eliminates potential exposure pathways presenting an unacceptable risk to human health and the environment, and does not place any restrictions on future land uses. EE/CA Removal Action Alternates 4/4a - Offsite Disposal, appear to meet these requirements (Sections 7.3.4 & 5):

Alternates 4/4a – Offsite Disposal: All waste material and debris will be excavated and transported to the nearest RCRA Subpart C or Subpart D landfill for disposal (as applicable). The fuel oil tank will be cleaned, cut up, and transported to the nearest metal recycler. Petroleum sludge and contaminated soil will be properly disposed of at an approved off-site facility.

Tribal Resolution

On August 14, 2018, the Bureau received Resolution No. 2018-42 signed Mr. Daniel Courtney, the Honorable Tribal Chairman and certified by eleven members of the Tribe's Board of Directors² (enclosed). In summary, the resolution states the following relative to the site:

- The Umpqua Mine Site is contaminated by mercury, arsenic and other materials used in the manufacturing and processing of mercury;
- The Umpqua Mine Site should be fully cleaned up so as not to create an environmental hazard to the Tribe or its Members;

² Resolution No. 2018-42, RESOLUTION OF THE COW CREEK BAND OF UMPQUA TRIBE OF INDIANS BOARD OF DIRECTORS DIRECTING THE U.S. GOVERNMENT CLEAN UP THE UMPQUA MINE SITE OF ENVIRONMENTAL HAZARDS, 8/12/2018, 3 pages.

- The Tribe requests the BIA work with BLM and the U.S. Environmental Protection Agency (EPA) to clean up the Umpqua Mine Site in its entirety and to insure that all materials removed from the contaminated site be hauled to an offsite waste area; and
- The Tribe requests the cleanup to be conducted in the most expeditious manner possible so as not to result in prolonged risk to the Tribal Membership.

Next Steps

In the July 13th meeting, John Barber, BLM, indicated the following next steps in the process:

- Select a cleanup alternative.
- BLM initiates a 30-day Public Comment Period.
- BLM addressed comments received.
- BLM develops an action memo (decision document) that includes project purpose and proposed remedy.
- BLM hires a contractor to clean up the site.

Summary

Now that the lands have been transferred into trust for the Tribe, the Bureau is very eager to work with the BLM and U.S. EPA to clean up the Umpqua Mine Site in its entirety and to insure that all contaminated mining-related infrastructure and related mining waste materials are completely removed from the site and properly disposed of offsite as expeditiously as possible.

BIA and the Tribe would like to request a follow up meeting with you and your staff to discuss the next steps in proceeding with Alternative 4/4a as detailed in the EE/CA.

Please contact Brian Haug, Northwest Regional Environmental Scientist at 503-231-6753 or brian.haug@bia.gov to schedule a meeting.

Sincerely,


ACTING Northwest Regional Director

Enclosures:

cc:

Bodie Shaw, Deputy Director of Trust Services
Brian Haug, Regional Environmental Scientist
Jason Robison, Cow Creek Tribe, Natural Resource Director
Maryanne Kenworthy, DOI Solicitor's Office
John Barber, BLM HazMat/AMLs Program Lead
Paul Tigan, BLM Field Manager
David Johnson, BLM Tribal Liaison

**RESOLUTION OF THE COW CREEK BAND OF UMPQUA
TRIBE OF INDIANS BOARD OF DIRECTORS
DIRECTING THE U.S. GOVERNMENT
CLEAN UP THE UMPQUA MINE SITE
OF ENVIRONMENTAL HAZARDS**

WHEREAS, the Cow Creek Band of Umpqua Tribe of Indians (the “Tribe”) is organized under the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), the provisions of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act of December 29, 1982 (P.L. 97-391), as amended by the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of October 26, 1987 (P.L. 100-139), and the Cow Creek Tribal Constitution, duly adopted pursuant to a federally supervised constitutional ballot, on July 8, 1991; and,

WHEREAS, pursuant to Article III, Section 1 of the Tribe’s Constitution, the Cow Creek Tribal Board of Directors (the “Board”) is the governing body of the Tribe; and,

WHEREAS, pursuant to Article VII, Section 1 (a) of the Tribe’s Constitution the Board has the power to “to negotiate with the Federal, state and local governments on behalf of the Tribe and advise and consult with representatives of the Department of the Interior or any other federal, state or local department, agency or office on all activities of those agencies or offices that may affect the Tribe”; and

WHEREAS, pursuant to Article VII, Section 1 (b) of the Tribe’s Constitution the Board has the power to “represent the Tribe before Federal, state and local governments and their departments and agencies”; and

WHEREAS, pursuant to Article VII, Section 1 (d) of the Tribe’s Constitution the Board has the power to “administer the affairs and assets of the Tribe, including Tribal lands”; and

WHEREAS, pursuant to Article VII, Section 1 (f) of the Tribe’s Constitution the Board has the power to “provide for taxes, assessments, permits, and license fees upon members and non-members within the trust lands under the jurisdiction of the Tribe”; and,

WHEREAS, pursuant to Article VII, Section 1 (g) of the Tribe’s Constitution the Board has the power to “manage all economic affairs and enterprises of the Tribe or to assign such responsibility to such persons, committees or companies (including tribally chartered corporations) as it designates”; and,

WHEREAS, pursuant to Article VII, Section 1 (i) of the Tribe's Constitution the Board has the power to "enact ordinances and laws governing the conduct of all persons on tribally owned land; to maintain order and protect the safety, health, and welfare of all persons within the jurisdiction of the Tribe; and to enact any ordinances or laws necessary to govern the administration of justice, and the enforcement of all laws, ordinances or regulations . . ."; and,

WHEREAS, pursuant to Article VII, Section I (t) of the Tribe's Constitution the Board has the power to "have such other powers and authority necessary to meet its obligations, responsibilities, objectives, and purposes as the governing body of the Tribe"; and,

WHEREAS, the Umpqua Mine Site is contaminated by mercury, arsenic and other materials used in the manufacturing and processing of mercury; and

WHEREAS, the Secretary of Interior has a trust obligation to the Tribe; and

WHEREAS, the Secretary of Interior and Bureau of Indian Affairs must ensure that the Trust Resource is not contaminated; and

WHEREAS, the Board believes that the Umpqua Mine Site should be fully cleaned up so as not to create an environmental hazard to the Tribe or its Members;

WHEREAS, the Tribe requests the Bureau of Indian Affairs to work with the Bureau of Land Management and the Environmental Protection Agency to clean up the Umpqua Mine Site in its entirety and to insure that all materials removed from the contaminated site be hauled to an offsite waste area; and

WHEREAS, the Tribe requests the cleanup to be conducted in the most expeditious manner possible so as not to result in prolonged risk to the Tribal Membership.

THEREFORE, BE IT RESOLVED that the Tribe, by and through the Board, hereby directs the U.S. Government to clean up the environmental hazards of the Umpqua Mine Site completely and expeditiously;

BE IT FURTHER RESOLVED, that any and all actions heretofore or hereafter taken by any Tribal officers, employees or agents under the authority of the foregoing resolution be, and hereby are, ratified and confirmed as essential to the core of the Tribe's sovereignty, and are the act and deed of the Tribe taken or made by said officers, employees or agents on behalf of the Tribe and within the scope of their duties to the Tribe; and,

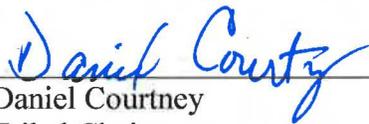
BE IT FURTHER RESOLVED, that neither this resolution nor any document or representation related herewith or therewith shall constitute a waiver of the sovereign immunity of the Tribe, or its officers acting in their official capacity within the scope of their authority; and,

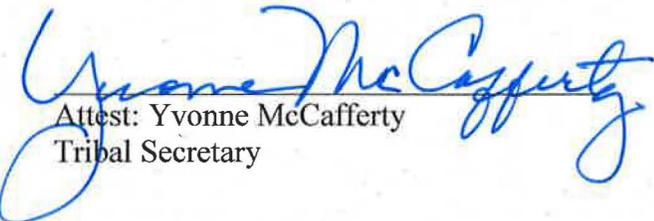
BE IT FURTHER RESOLVED, that the actions authorized and taken by this Resolution are intended to advance the sovereign self-governance of the Tribe, and to protect the political integrity, economic security and health and welfare of the Tribe and its members; and,

BE IT FURTHER RESOLVED, any prior Tribal regulations, resolutions, orders, motions, legislation, codes or other Tribal law which are materially inconsistent with this Resolution are hereby repealed, but only to the extent of any such inconsistency and as applied to the specific matter in which any such inconsistency arises.

CERTIFICATION

It is hereby certified that the Cow Creek Tribal Board of Directors, governing body of the Cow Creek Band of Umpqua Tribe of Indians, composed of eleven (11) members of whom 11, constituting a quorum, were present at a meeting duly held on the 12 day of August, 2018, adopted the foregoing **RESOLUTION OF THE COW CREEK BAND OF UMPQUA TRIBE OF INDIANS BOARD OF DIRECTORS DIRECTING THE U.S. GOVERNMENT TO CLEAN UP THE UMPQUA MINE SITE OF ENVIRONMENTAL HAZARDS** by the affirmative vote of 11 for and 0 against.


Daniel Courtney
Tribal Chairman


Attest: Yvonne McCafferty
Tribal Secretary