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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

MIDAS GOLD IDAHO, INC.,
IDAHO GOLD RESOURCES COMPANY, LLC,
and STIBNITE GOLD COMPANY,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA; U.S.
DEPARTMENT OF AGRICULTURE; THE
UNITED STATES FOREST SERVICE; SONNY
PERDUE in his official capacity as U.S. Secretary
of Agriculture; and VICKI CHRISTIANSEN in her
official capacity as the Chief of the United States
Forest Service.

Defendants.

No.

COMPLAINT AND JURY DEMAND

INTRODUCTION

1. Plaintiffs Idaho Gold Resources Company, LLC (“IGRC”), Stibnite Gold Company (“SGC”), and Midas Gold Idaho, Inc. (“MGII”) (hereinafter collectively referred to as “Midas” or “Plaintiffs”) bring this action under 33 U.S.C. § 1365(a), the citizen enforcement provision of the Federal Water Pollution Control Act, also known as the Clean Water Act (“CWA”), against Defendants the United States of America, United States Department of Agriculture, the United

States Forest Service (“USFS”), U.S. Secretary of Agriculture Sonny Perdue, and USFS Chief Vicki Christiansen in their official capacities (“Defendants”).

2. The CWA prohibits the “discharge of any pollutant by any person,” 33 U.S.C. § 1311(a). The discharge of a pollutant is “any addition of any pollutant to navigable waters from any point source.” *Id.* § 1362(12)(A). “Navigable waters” is defined as “the waters of the United States, including the territorial seas.” *Id.* § 1362(7). A “point source” is a “discernible, confined and discrete conveyance.” *Id.* § 1362(14). A party who obtains and complies with a National Pollutant Discharge Elimination System (“NPDES”) permit is exempt from the general prohibition on point source pollution. *Id.* §§ 1311(a), 1342(a)(1).

3. On August 8, 2019, the Nez Perce Tribe (“Tribe”) filed a suit against Midas captioned *Nez Perce Tribe v. Midas Gold Corp.*, No. 01:19-cv-307 (D. Idaho) (“Tribe’s Suit”) alleging that in violation of the CWA, Midas (and their parent entity, Midas Gold Corp. (“MGC”)) has discharged and continues to discharge pollutants from multiple point sources at the Stibnite Gold Project site (“the Site”) into the East Fork South Fork Salmon River (“EFSFSR”) and its tributaries without authorization by a valid NPDES permit(s).

4. The Tribe seeks declaratory and injunctive relief prohibiting Midas and MGC from discharging pollutants into the EFSFSR and its tributaries without obtaining and complying with a valid NPDES permit(s). The Tribe also seeks CWA civil penalties, under CWA § 309(d), 33 U.S.C. § 1319(d), against Midas and MGC, jointly and severally, for each and every violation committed, to be paid to the U.S. Treasury. Finally, the Tribe seeks an award of litigation costs including attorney and expert witness fees, under CWA § 505(d), 33 U.S.C. § 1365(d), and any other applicable cost and fee recovery statutes.

5. Plaintiffs IGRC and SGC hold patented and unpatented mining claims in the Stibnite-Yellow Pine Mining District (“District”), which is located within the Boise and Payette National Forests. Four of the point sources alleged in the Tribe’s Suit—referred to by the Tribe as the Hangar Flats Tailings Pile, Defense Minerals Exploration Administration (“DMEA”) Adit and Waste Rock Dump, the Bonanza Adit, and the Cinnabar Tunnel—are situated fully or partially on National Forest System (“NFS”) lands within these Forests that are subject to unpatented mining claims.

6. The lands underlying the unpatented mining claims where the Hangar Flats Tailings Pile, DMEA Adit and Waste Rock Dump, the Bonanza Adit, and the Cinnabar Tunnel are located are NFS lands owned by the United States and managed by USFS.

7. The EFSFSR and its tributaries, Sugar Creek and Meadow Creek, are each a navigable water. Due to historic mining activities and/or natural mineralization in the land in this area, mineral constituents such as aluminum, arsenic, antimony, cyanide, iron, manganese, mercury, and thallium have entered the EFSFSR and its tributaries from some of the lands subject to IGRC and SGC’s mining claims at concentrations above applicable water quality criteria. Such contributions have occurred on multiple occasions during the past five years and are ongoing on at least one of those properties. Each of these pollutants can negatively impact the health of fish, other aquatic biota, birds, mammals, and humans.

8. IGRC and SGC’s holdings in the District include patented mining claims on private land that are downstream of the Hangar Flats Tailings Pile, the DMEA Adit and Waste Rock Dump, the Bonanza Adit, and the Cinnabar Tunnel. Discharges from these locations undermine Midas’s efforts and vision to restore the Site and environment concurrent with all future mining phases under its Plan of Restoration and Operations (“PRO”) which is now undergoing review by

USFS under the 36 C.F.R. § 228 Subpart A regulations. Midas may be forced to incur additional costs to remedy the waters impacted by the discharge of pollutants at the DMEA Adit and Waste Rock Dump, the Bonanza Adit, the Cinnabar Tunnel, and unpatented portions of the Hangar Flats Tailings Pile in order to complete the planned restoration as envisioned in its PRO. Any past or ongoing discharges therefore harm IGRC and SGC's rights as landowners and may require MGII to perform additional work to address water quality issues at the Site.

JURISDICTION AND VENUE

9. Jurisdiction is proper in this Court under the CWA, 33 U.S.C. § 1365(a), which vests U.S. district courts with jurisdiction over citizen enforcement actions like the one at issue in this case.

10. The requested relief is proper under the CWA, 33 U.S.C. § 1365(a), and under 28 U.S.C. §§ 2201-2202 because Midas will likely have evidentiary support after a reasonable opportunity for further investigation or discovery that USFS has discharged and continues to discharge pollutants without a valid NPDES permit(s).

11. Plaintiffs are citizens under the CWA. 33 U.S.C. § 1365(g).

12. As required by the CWA, Midas provided Defendants with notice of its intent to sue sixty days prior to filing this Complaint. 33 U.S.C. § 1365(b)(1). At the same time, Midas also provided notice of the impending action to the United States Environmental Protection Agency ("EPA") and Idaho Department of Environmental Quality ("IDEQ") officials, as required by the CWA. *Id.* See Notice of Intent, June 11, 2020 and Attachments thereto, which are attached hereto as Exhibit A ("Ex. A"), and incorporated by reference. Neither agency has commenced an action that constitutes diligent prosecution to redress Defendant's CWA likely violations. Therefore, this action is permitted to commence under the CWA.

13. The United States and USFS have waived sovereign immunity under 33 U.S.C. § 1365(a)(1).

14. Venue is proper in this Court under the CWA, 33 U.S.C. § 1365(c)(1), because the alleged point source pollutant discharges are located within the District of Idaho.

PARTIES

Midas Gold

15. Plaintiffs MGII and IGRC are Idaho companies and wholly owned subsidiaries of MGC.¹

16. Plaintiff SGC is an Idaho company and wholly owned subsidiary of IGRC.

17. MGII was incorporated in the State of Idaho to provide exploration and development services to the Stibnite Gold Project. MGII has service agreements with both SGC and IGRC under which it is engaged to provide certain professional, human resources, administration, accounting, exploration, regulatory, engineering and other services, including on SGC's and IGRC's patented and unpatented claims in the District, that would otherwise be reasonably inferred to include the scope of the services contemplated and as described in the services agreement.

18. IGRC is an Idaho LLC formed with a purpose of holding patented and unpatented claims in the District, including the West End Deposit and a majority of the Stibnite Gold Project exploration targets. IGRC has rights to certain patented and unpatented mining claims in the District.

¹ MGC is not a Plaintiff in this suit. MGC has no landholdings at issue in this case and was organized to locate, acquire, and develop mineral properties located principally in the Stibnite Mining District in Valley County, Idaho. Its principal business activity continues to be the advancement of the Plaintiffs' Proposed Mine in Valley County, Idaho.

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