



**James C. Kenney**

Cabinet Secretary

**NEW MEXICO  
ENVIRONMENT DEPARTMENT  
and  
OFFICE OF NATURAL RESOURCES TRUSTEE  
SANTA FE, NEW MEXICO**



**Maggie Hart Stebbins**

Trustee

August 21, 2020

Mr. Gregory Sopkin  
Regional Administrator  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

Submitted electronically to: [jenkins.katherine@epa.gov](mailto:jenkins.katherine@epa.gov)

RE: Proposed Plan and Final Focused Feasibility Study for the Bonita Peak Repository, Bonita Peak Mining District Superfund Site, San Juan County, Colorado

Dear Mr. Sopkin,

On behalf of the New Mexico Environment Department and the New Mexico Office of the Natural Resources Trustee, attached please find our comments on the July 2020 Proposed Plan and Final Focused Feasibility Study for the Bonita Peak Repository, Bonita Peak Mining District Superfund Site.

Please do not hesitate to contact us to discuss further.

Sincerely,

James C. Kenney  
Cabinet Secretary  
Environment Department

A handwritten signature in blue ink that reads "Maggie Hart Stebbins, for".

Maggie Hart Stebbins  
Trustee  
Office of the Natural Resources Trustee

Attachment (1)

cc: Courtney Kerster, Director of Federal Affairs, Office of Governor Michelle Lujan Grisham  
Rebecca Roose, Water Protection Division Director, NMED  
Dennis McQuillan, Science Coordinator, NMED  
Betsy Smidinger, Superfund and Emergency Management Division Director, EPA Region 8  
Katherine Jenkins, Community Involvement Coordinator, EPA Region 8

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## Attachment

### Introduction

The United States Environmental Protection Agency (EPA) released a Proposed Plan and focused feasibility study (FFS) for a site-wide repository to centrally manage mine waste at the Bonita Peak Mining District (BPMD) Superfund Site (Site). The Site consists of historic and ongoing releases from mining operations in three drainages—Mineral Creek, Cement Creek, and Upper Animas—that converge into the Animas River near Silverton, Colorado. NMED concurs that a Site-wide repository is necessary for the proper long-term disposal of mine wastes at the BPMD Site. Additionally, a Site-wide repository is needed for permanent disposal of the sludge at the Gladstone Interim Water Treatment Plant to allow for continued operation of the plant to treat water from the Gold King Mine and possibly other draining mines in the future.

This proposed plan provides an overview of the Site, a summary of the alternatives evaluated in the FFS, and details of and supporting rationale for EPA's preferred alternative, which is to install liners and leachate collection systems on three of the four existing Mayflower Mill tailings impoundments. The plan proposes that BPMD waste be deposited into the lined cells for permanent disposal and isolation from the environment.

### Comments

1. **The New Mexico Environment Department (NMED) supports EPA's proposal to use the Mayflower Mill tailings impoundments as the Bonita Peak Repository for Gladstone interim water treatment plant sludge and other waste generated by activities at the BPMD Superfund Site.**

Steep terrain and limited areas of relatively flat topography outside of vulnerable floodplains within the BPMD create challenges for finding a suitable repository location for waste generated by Superfund activities. EPA's FFS, and investigations by Sunnyside Gold Corporation,<sup>1</sup> support EPA's conclusion that the Mayflower tailings facility is suitable for use as the proposed Bonita Peak Repository. The reclaimed tailings impoundments are located above the Animas River floodplain and are relatively protected from potential erosion caused by surface-water flow. Indeed, uncontrolled tailings from the Eureka Mill, that had been deposited in the Animas floodplain upstream from the Mayflower Mill, were previously recovered and relocated at the Mayflower tailings impoundments. Continued use of the relatively protected Mayflower tailings impoundments as the Bonita Peak Repository makes sense.

NMED agrees with the conclusion in the FFS that continued operation of the Gladstone interim water treatment plant and implementation of the interim remedial actions will help reduce ecological risk due to exposure to metals/metalloids. Establishment of the Mayflower tailings impoundments as the Bonita Peak Repository will support Superfund activities to reduce or eliminate discharges of metals into the watershed. These efforts will likely lessen the adverse effects of metals in river water in New Mexico, including source water protection challenges for public drinking water systems that use river water, human health and environmental threats to vulnerable

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1. [http://www.sgcreclamation.com/reports/CAG Meeting Presentation Final.pdf](http://www.sgcreclamation.com/reports/CAG_Meeting_Presentation_Final.pdf)

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populations, impairment for aquatic life standards, and further natural resource damages.

- 2. EPA must recover hotspots of Animas River “floodplain tailings” with high concentrations of metals between Silverton and Eureka, and dispose of them at the proposed Bonita Peak Repository.**

While most of the Animas River floodplain tailings have already been removed and deposited at the Mayflower tailings impoundments, testing by EPA, NMED and Sunnyside Gold Corporation<sup>2</sup> has demonstrated that hot spots of floodplain tailings containing percentage concentrations of lead and other metals still exist in the floodplain downstream from Eureka. For the purpose of protecting aquatic life and public drinking water systems in New Mexico, NMED demands that EPA commit in the Interim Record of Decision to remove these heavily contaminated floodplain tailings for disposal at the proposed Bonita Peak Repository to prevent continued impacts on New Mexico downstream users and aquatic life.

- 3. The BPMD Site threatens human health and the environment in areas of New Mexico that contain a high percentage of minority and low-income populations. The FFS fails to include risk assessment information for human health and the environment in New Mexico and fails to include these human and ecological targets in the Risk Basis for the proposed Bonita Peak Repository. EPA must re-write the human health, aquatic and terrestrial risk assessments to give proper consideration to BPMD stakeholders downstream from Colorado.**

EPA’s Environmental Justice Screening and Mapping Tool (EJSCREEN) shows that, along the San Juan River in New Mexico, below the confluence with the Animas River, the minority population is predominantly in the 95-100 percentile, and the low-income population is predominantly in the 80-90 and 90-95 percentiles. These percentiles stand out because by comparison, these San Juan and Animas River communities are among the 5-20% in the U.S. with the highest percentages of minority and low-income populations.

Minority and low-income populations living along the San Juan River may be more susceptible to environmental pollutants that are being transported through rivers in New Mexico from the BPMD Site to Lake Powell. EPA, however, has excluded New Mexico from consideration in the Human Health Risk Assessment, the Aquatic BERA, the most recent Terrestrial Baseline Ecological Risk Assessment (BERA), as well as the risk assessment in this FFS. EPA’s exclusion of vulnerable populations in New Mexico from these Risk Assessments violates Executive Order 12898, as well as EPA’s own policy on environmental justice.

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority and Low-Income Populations, February 11, 1994, states that “... each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations of the United States.”<sup>3</sup>

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2 See [http://www.sgcreclamation.com/reports/CAG\\_Meeting\\_Presentation\\_Final.pdf](http://www.sgcreclamation.com/reports/CAG_Meeting_Presentation_Final.pdf), slide 35.

3 See <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>.

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EPA's 2020-21 National Program Guidance for the Office of Land and Emergency Management requires that EPA "integrate environmental justice into its programs" and "mobilize resources to address the needs of disproportionately overburdened and underserved communities."<sup>4</sup>

As we stated in our June 25, 2020 letter to you regarding the Terrestrial Baseline Ecological Risk Assessment (BERA), EPA must immediately give proper consideration to all BPMD stakeholders downstream from Colorado with emphasis on the vulnerable populations in New Mexico. EPA must revise all risk assessments associated with the greater BPMD Superfund activities to correct the environmental justice deficiencies, evaluate all possible exposure pathways, and to quantify BPMD-specific and cumulative impacts to vulnerable populations in New Mexico.

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<sup>4</sup> See <https://www.epa.gov/sites/production/files/2019-06/documents/fy-20-21-olem-np-guidance.pdf>.