Record of Decision

For the Coeur d'Alene Basin Restoration Plan and Environmental Impact Statement

April 2018

The Coeur d'Alene Basin Natural Resource Trustees

Coeur d'Alene Tribe

Idaho Department of Environmental Quality

Idaho Department of Fish and Game

U.S. Bureau of Land Management

U.S. Fish and Wildlife Service

U.S. Forest Service

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Coeur d'Alene Basin Restoration Plan
Record of Decision

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1.0 Introduction

For more than 100 years following European settlement, the Coeur d'Alene Basin[1] ("the Basin") was one of the most productive silver, lead, and zinc mining areas in the United States. The majority of mining and mineral processing in the Basin occurred along the South Fork of the Coeur d'Alene River and its tributaries. The mining wastes generated by these operations contain hazardous metals, including lead, zinc, cadmium, and arsenic. Mining wastes in the Coeur d'Alene Basin were discharged into the Coeur d'Alene River and its tributaries, or were deposited on lands and eventually migrated into ground and surface waters. As a result, mining-related waste rock, tailings, mine drainage, and contaminated floodplain deposits are continuing sources of metals contamination in the Coeur d'Alene Basin. Tailings and contaminated sediments continue to be deposited in the Coeur d'Alene Basin, including stream channels, levees, and floodplain, as well as in lakes and wetlands next to the Coeur d'Alene River and in Coeur d'Alene Lake. Collectively, the hazardous substances released from that mining are termed "Mine Waste Contamination" in this document.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, provides a means for addressing releases of hazardous substances that endanger public health and the environment. The Act authorizes the Environmental Protection Agency ("EPA"), and certain other entities, to seek damages for and remediate hazardous substance releases. The Act, along with the Natural Resource Damage Assessment and Restoration (NRDAR) regulations (43 C.F.R. Part 11), authorizes federal, state, and tribal governments, referred to as "natural resource trustees," to seek damages for natural resource injuries caused by releases of hazardous substances. Damages may include the compensable value of the natural resource services lost to the public pending restoration, including interim lost human uses of those functions. *See* 43 C.F.R. § 11.80(b). The trustees then use the monetary damages obtained to restore, replace, and/or acquire the equivalent of the injured natural resources (42 U.S.C. § 9607(f)(1)). Before spending that money, the trustees must create a restoration plan to guide the restoration process. The Restoration Plan, and its accompanying Environmental Impact Statement, for the Coeur d'Alene Basin is the subject of this Record of Decision ("ROD").

The natural resource trustees ("the Trustees") for the Coeur d'Alene Basin injury addressed in this ROD are the Coeur d'Alene Tribe ("Tribe"); the State of Idaho ("State"), represented by the Idaho Department of Fish and Game and the Idaho Department of Environmental Quality; the U.S. Department of Agriculture ("USDA"), represented by the U.S. Forest Service ("USFS"); and the U.S. Department of the Interior ("DOI"), as represented by the Bureau of Land Management ("BLM") and the U.S. Fish and Wildlife Service ("USFWS").

Through litigation and numerous legal settlements, the Trustees obtained funds to address natural resource injury from Mine Waste Contamination in the Coeur d'Alene Basin. CERCLA requires that the Trustees develop a Restoration Plan before recovered damages can be spent. *See* 42 U.S.C. §9611(i). In addition, the National Environmental Policy Act ("NEPA") requires the federal Trustees to conduct environmental review of alternative ways of meeting the purpose and need for action. The Trustees jointly prepared the Restoration Plan ("RP") and USDA, as the lead federal agency, worked with the other Trustees and the public to prepare the Environmental Impact Statement ("EIS"). The EIS evaluates the environmental effects of two possible action alternatives for a

[1] The "Coeur d'Alene Basin" refers to the Coeur d'Alene Lake watershed and Upper Spokane River subbasin in Idaho.

restoration plan as well as a no-action alternative. Collectively, the RP and EIS are called the RP/EIS. In addition to fulfilling the requirements of NEPA, the RP/EIS satisfies the CERCLA requirement that the Trustees include the public when developing their restoration plan.

1.1 Purpose and Need for Action

The purpose of and need for the Restoration Plan is to create a principled framework for choosing projects to restore, replace, and/or acquire the equivalent of the natural resources that were injured by releases of Mine Waste Contamination in the Coeur d'Alene Basin and to compensate for the interim loss of human uses previously provided by those injured natural resources.

1.2 Public Involvement

Under CERCLA, NEPA, and their implementing regulations, public participation is a required and important part of restoration planning. As part of the process to develop the Draft RP/EIS, the federal Trustees began the formal scoping process by publishing a notice of intent in the Federal Register on June 13, 2013 (78 FR 35602). From June 13 to August 27, 2013, the Trustees conducted formal scoping for the Draft Coeur d'Alene Basin Restoration Plan. During that process, the Trustees solicited public comments and identified key issues. The Trustees conducted substantial public and community outreach in the restoration planning area as well as with related Federal agencies, State and local government agencies, tribal governments, and other interested organizations.

The intent of formal scoping was to:

- inform the public about the Natural Resource Damage Assessment and Restoration (NRDAR) planning process;
- solicit the public's input on specific resources, their services, and areas within their communities that have been affected by the release of Mine Waste Contamination; and
- receive public input on the approaches that should be considered for restoring those resources.

During preparation of the Draft RP/EIS, targeted scoping was conducted to:

- identify significant environmental, socioeconomic, and other issues to be analyzed in the Draft RP/EIS and eliminate nonsignificant issues from detailed analysis;
- identify other environmental review and consultation requirements so they can be integrated with the environmental analysis process (such as historic preservation, endangered species, and other requirements); and
- identify information gaps or other issues potentially affecting the proposed action.

The Trustees evaluated the information received through that process and utilized other resources to create a draft RP/EIS. EPA published a notice of availability for that document in the Federal Register on November 10, 2016 (81 FR 79019). The public was further notified of the availability of the draft through press releases, direct mailings to interested and potentially affected individuals and organizations, newspaper notices, open houses, presentations for organizations and government entities, website postings, and social media. Additionally, the Trustee Council representative for the State of Idaho held meetings with County Commissioners from Benewah, Shoshone, and Kootenai Counties to brief the commissioners about the draft and share information about upcoming workshops and public comment opportunities. The public comment period ended on April 17, 2017.

The Trustees received 61 responses: 40 unique letters, with 21 submittals of a similar form letter. These comments were used to inform, shape, and improve the RP/EIS. (See Appendix 5 of the EIS.)

2.0 Trustee Decision and Rationale

This ROD documents the Trustees' decision to select Alternative 2 (Ecosystem Focus with Additional Human Use Considerations) as the Restoration Plan for the Coeur d'Alene Basin. This alternative integrates ecological restoration of injured wetland, stream, and lake ecosystems with funding for Human Use Projects which will provide some compensation for interim natural resource service losses. The Trustees understand that restoration of the resources in the Basin will take decades. The human uses of the services previously provided by those resources, therefore, will not recover for a very long time. Given those facts, the Trustees determined it is in the public interest to select the alternative that allows a relatively small portion, up to ten percent, of the recovered damages to be used to compensate for some of those interim lost uses.

3.0 Alternatives Considered in Detail

CERCLA and the NRDAR regulations that guide its implementation direct the Trustees to consider a range of alternatives when pursuing restoration, including a natural recovery alternative with minimal management actions (a "no-action" alternative). Reasonable alternatives are those that substantially meet the agencies' purpose and need.

The regulations implementing NEPA state that alternatives considered must restore or enhance the quality of the human environment and avoid or minimize any possible adverse effects of the agencies' actions upon the quality of the human environment. The Trustees considered the following factors (found under the CERCLA NRDA regulations, 43 C.F.R. § 11.82) when comparing and evaluating restoration alternatives:

1. Technical feasibility
2. The relationship of the expected costs of the proposed actions to the expected benefits from the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources
3. Cost effectiveness, as that term is used in the regulations
4. The results of any actual or planned response actions
5. Potential for additional injury resulting from the proposed actions, including long-term and indirect impacts, to the injured resources or other resources
6. The natural recovery period
7. Ability of the resources to recover with or without alternative actions
8. Potential effects of the action on human health and safety
9. Consistency with relevant Federal, State, and Tribal policies
10. Consistency with relevant Federal, State, and Tribal laws

Based on public comments and the Trustees' own knowledge and experience, the Trustees developed and considered three alternatives: a no-action alternative and two action alternatives.

3.1 Alternative 1 – No Action (Natural Recovery)

Under this alternative, no action would be taken by the Trustees to restore natural resources injured by the release of Mine Waste Contamination in the Coeur d'Alene Basin. Federal regulations direct that environmental impact statements describe and analyze the effects of the No Action Alternative (40 C.F.R. § 1502.14(d)). While this alternative did not respond to the purpose and need of the Restoration Plan, it was considered in the EIS to provide a basis for comparison of the environmental effects of Alternatives 2 and 3 (see Section 2.2.1 of the EIS).

3.2 Alternative 2 – Ecosystem Focus with Additional Human Use Considerations (Proposed Action)

Alternative 2 is the Coeur d'Alene Basin Restoration Plan described in its entirety in Appendix 6 of the RP/EIS. Alternative 2 focuses work on ecological restoration of injured wetland, stream, and lake ecosystems in the Basin while also allowing limited funding for two types of Human Use Projects: those dependent on ecological restoration projects and those independent of ecological restoration projects.

3.2.1 Human Use Projects Dependent on Ecological Restoration Projects

These are projects that will speed up the recovery of services lost to the public because of injury to natural resources in the Basin and that are tied to restoration projects in the Basin. The Trustees may allocate up to five percent (5%) of restoration funds to this category of Human Use Projects. Examples of such projects include, but are not limited to, a dock that is connected to a lake restoration project or a raised walkway and interpretive signs that are associated with a wetland restoration project.

3.2.2 Human Use Projects Independent of Ecological Restoration Projects

These are projects that will provide near-term compensation for the services lost to the public because of injury to natural resources in the Basin. These projects are not tied to restoration projects in the Basin. The Trustees may allocate up to another five percent (5%) of available restoration funds for this category of Human Use Projects. These projects may be implemented in either the Basin or in the Hangman Creek Watershed, which is defined as the area that drains into the mainstem of Hangman Creek and its tributaries located within the exterior boundary of the Coeur d'Alene Reservation. These projects will typically improve access to or use of natural resources, support environmental stewardship and education, and strengthen community heritage and cultural connections to natural resources. Examples of such projects include, but are not limited to, a dock that is not otherwise connected to a lake restoration project or a raised walkway and interpretive signs that are not specifically associated with a wetland restoration project (see Section 2.2.2 of the EIS).

3.3 Alternative 3 – Ecosystem Restoration Focus

Alternative 3 is similar to the Proposed Action except that no Human Use Projects would be implemented to compensate for interim service losses as a result of the release of Mine Waste Contamination. Rather, interim lost human uses would be indirectly compensated for, over a longer period of time, as ancillary benefits from projects with an ecological focus.

The geographic extent of restoration under Alternative 3 would likewise be less than under the Proposed Action. Because no Human Use Projects would be done, no projects designed to compensate for interim lost human uses important to the Coeur d'Alene Tribe would be carried out. Thus, the potential under Alternative 2 to conduct work in the Hangman Creek Watershed would not occur under Alternative 3 (see Section 2.2.3 of the EIS).

3.4 Preferred Alternative

The Trustees determined that Alternative 2 is the preferred alternative since, unlike the other alternatives, it provides some compensation for interim lost human uses of natural resource services while also ensuring the core work under the Restoration Plan focuses on natural resource restoration. The Trustees understand that restoration of the resources in the Basin will take decades. The human uses of the services previously provided by those resources, therefore, will not recover for a very long time. Given those facts, the Trustees determined it is in the public interest to select the alternative that allows a relatively small amount, up to ten percent, of the recovered damages to be used to compensate for some of those interim lost uses.

The ten factors under the NRDAR regulations listed in Section 3.0 were used to evaluate each alternative. The Trustees paid particular attention to the factors related to the anticipated results of actual and planned response actions by EPA and others, the natural recovery period, and the potential impacts on human health and safety (see Section 2.1 of the EIS).

The important aspects and key differences among the alternatives and their associated effects are listed below.

- The rate, extent, and likelihood of recovery of conditions towards baseline would be greater under the action alternatives (Alternatives 2 and 3) than under the No Action Alternative.

  Although some resource conditions would slowly improve towards baseline conditions under the No Action Alternative, the action alternatives include measures that address conditions currently inhibiting resource recovery that are unlikely to improve without intervention.

- The geographic area where projects can occur differs under Alternatives 2 and 3.

  Alternative 2 would potentially include projects in the Hangman Creek Watershed which is outside the hydrologic boundaries of the Coeur d'Alene Basin. In contrast, under Alternative 3, projects would only be done in the Coeur d'Alene Basin.

- The types of projects that can be approved differ under Alternatives 2 and 3.

  Alternative 2 includes potential projects to compensate for interim lost human uses of natural resources in the near term while ecosystem restoration proceeds. This could include Human Use Projects in both the Coeur d'Alene Basin and the Hangman Creek Watershed. Projects in the Hangman Creek Watershed would support the traditional subsistence and cultural practices important to the Coeur d'Alene Tribe. Under Alternative 3, human uses dependent on healthy ecological conditions would slowly recover over time, but Alternative 3 does not include projects that would provide immediate opportunities or enhanced facilities for human uses.

- Alternative 2 would restore natural resources important to Coeur d'Alene Tribe in locations where the resources are more available for Tribal use in traditional subsistence and cultural practices than under Alternative 3.

Alternative 2 potentially includes projects that would compensate for the services lost by injury to the natural resources in the Basin by improving culturally important natural resources in Hangman Creek Watershed, which is close to current Tribal population centers. In contrast, under Alternative 3, all restoration funds would be allocated only to the Coeur d'Alene Basin, portions of which are less accessible to people from Tribal population centers.

- The extent, rate, and likelihood of recovery of ecological conditions towards baseline would likely be greater under Alternative 3 than under Alternative 2.

  Under Alternative 3, all project funds would be spent on ecological restoration. In contrast, Alternative 2 allows for up to ten percent (10%), or approximately $14 million, to be spent on projects or project components intended to compensate for interim lost human uses of natural resources in the near term while ecosystem restoration proceeds. This portion of funds also potentially includes restoration of natural resources important to the Coeur d'Alene Tribe in the Hangman Creek Watershed. Because more funds would be spent on ecological restoration under Alternative 3, the extent of ecological restoration would be greater under Alternative 3. Subsequently, the rate and likelihood of recovery of ecological conditions towards baseline would likely be greater under Alternative 3 than under Alternative 2.

- Alternatives 2 and 3 would create jobs and labor income due to restoration spending.

  It is expected that each $1 million spent on ecosystem restoration or Human Use Projects would yield 34.3 jobs and $1.2 million in labor income (see Section 3.10.4.3 of the EIS).

- Potential changes to tax revenue in the planning area are dependent on visitation and population changes in response to conditions created by the alternatives.

  The Human Use Projects proposed under Alternative 2 could increase sales and property tax revenue from recreation- and tourism-related sectors. Improved natural amenities created by both Alternatives 2 and 3 may attract new residents, contributing to increases in property tax revenue, which may offset tax revenue losses, if any, based on changing land use associated with restoration work (see Section 3.10.4.3 of the EIS).

4.0 Environmental Effects of the Alternatives

The EIS presents a detailed evaluation of the reasonably foreseeable effects of implementing the alternatives on the physical, biological, and human environment. These are summarized below in Table 1. In general, short-term adverse effects will likely occur as a result of restoration activities but long-term benefits would be expected returning resources toward baseline conditions. Short-term effects are expected to be localized and temporary in nature and, as such, have low potential to combine with other actions resulting in cumulative effects.

Table 1. Summary of resource issues and environmental effects

Resource Issues	Alternative 1	Alternative 2 (Preferred)	Alternative 3
Hydrology and water quality	No effects on water resources, much slower rate, and less likelihood of recovery toward baseline conditions compared to the action alternatives.	Short-term localized adverse effects to water quality and hydrology during restoration activities. Long-term beneficial effects to hydrology and water quality.	Effects to hydrology and water quality would be similar to Alternative 2. However, the magnitude of effects could be greater given all funds would go toward ecological restoration and would occur in a smaller geographic area, since no projects would occur in the Hangman Creek Watershed.
Aquatic species and habitat	No effects on aquatic species and habitat, much slower rate, and less likelihood of recovery toward baseline conditions compared to the action alternatives.	Short-term disturbance and changes in distribution of aquatic species and adverse effects to their habitat as a result of restoration activities. Long-term benefits to most aquatic species and their habitat, and restoration may result in changes to species assemblages and distribution.	Effects to aquatic species and their habitat would be similar to Alternative 2. However, the magnitude of effects could be greater given all funds would go toward ecological restoration and would occur in a smaller geographic area, since no projects would occur in the Hangman Creek Watershed.
Terrestrial species and habitat	No effects on terrestrial species and habitat, much slower rate, and less likelihood of recovery toward baseline conditions compared to the action alternatives.	Short-term changes in species distribution and short-term species disturbance, displacement, and mortality (for certain species). Long-term negative impacts to certain species as a result of habitat manipulation but long-term benefits to waterfowl by reducing exposure to contaminants. Primarily long-term benefits to species and their habitat would occur as a result of restoration.	Effects to terrestrial species and their habitat would be similar to Alternative 2. However, the magnitude of effects could be greater given all funds would go toward ecological restoration and would occur in a smaller geographic area, since no projects would occur in the Hangman Creek Watershed.
Vegetation	No effects on vegetation, much slower rate, and less likelihood of recovery toward baseline conditions compared to the action alternatives.	Short-term disturbance and mortality to vegetation would occur as a result of restoration. Long-term beneficial effects would occur for vegetation communities as a result of restoration.	Effects to vegetation would be similar to Alternative 2. However, the magnitude of effects could be greater given all funds would go toward ecological restoration and would occur in a smaller geographic area, since no projects would occur in the Hangman Creek Watershed.

Resource Issues	Alternative 1	Alternative 2 (Preferred)	Alternative 3
Recreation and human uses of natural resources	No effects on recreation and human uses of injured natural resources, much slower rate and less likelihood of recovery toward baseline conditions compared to the action alternatives.	Short-term access may be reduced as a result of restoration activities. Long-term increases in abundance and diversity of recreation opportunities and other human uses.	No direct increases in access to natural resources or to the abundance and diversity of recreational opportunities. Short-term effects to access would be similar to Alternative 2.
Heritage resources	No effects to heritage resources.	Potential short- and long-term adverse effects to heritage resources as a result of restoration activities if surveys fail to identify heritage resources or activities at undiscovered sites.	Effects would be similar to Alternative 2 but likely less for Alternative 3 due to lack of Human Use Projects that could increase access and increase the likelihood of vandalism and damage. Projects would not occur in the Hangman Creek Watershed, reducing the geographic scope.
Resources of particular importance to the Coeur d'Alene Tribe	No effects to Tribal resources and it is unlikely recovery would occur to support Tribal subsistence and cultural practices.	Short-term reductions in access to resources as a result of restoration activities. Long-term benefits to resources and access.	Effects would be the same as Alternative 2 except that there would be no Human Use Projects and no effects in the Hangman Creek Watershed. Natural resources specific to Tribal needs would likely not recover sufficiently under Alternative 3 as a result of extensive contamination and other factors.
Socioeconomics and environmental justice	No effects to cultural conditions, employment, and tax revenue or possibly slower growth in tax revenue.	Potential increase in employment and income, tax revenue, and cultural and biological conditions.	Effects would be similar to Alternative 2. Likely, less growth in recreation-related tax revenue than Alternative 2. Projects would not occur in the Hangman Creek Watershed, reducing the geographic extent.

5.0 Mitigation and Monitoring of Adverse Impacts

All projects will be designed to have a positive impact on natural resources or to provide for interim lost human uses. Any potential short-term impacts will be mitigated in several ways. First, the Trustees developed design features to be used during implementation of Alternative 2 (as described in the RP/EIS, Section 2.2.4). The purpose of design features is to avoid, minimize, reduce, or eliminate potential negative effects of projects on cultural, physical, chemical, and biological resources in the project area. All relevant design features would be included in all projects initiated under the Restoration Plan. Second, the Trustees' project selection criteria (as described in the EIS, Appendix 6, Section 5.4) encourage the selection of projects that minimize adverse impacts to the environment. The selection criteria consist of eligibility criteria, which need to be met before a project is considered, and additional criteria that inform the restoration project selection process by identifying desirable qualities to be considered in order to rank projects. In addition to design

features and selection criteria, the Trustees will use adaptive management techniques to minimize adverse impacts and will conduct project implementation monitoring to correct any problems that may arise. The Trustees will coordinate their projects with EPA's cleanup work to minimize any possible cumulative adverse impacts (see EIS, Appendix 6, Section 5.2).

6.0. Future Project Planning and Implementation

The future responsibilities and actions of the Trustees will include project planning, public engagement, project selection and implementation, monitoring and adaptive management, financial management, and restoration tracking and reporting. The Trustees will oversee and govern future project planning and implementation in compliance with CERCLA, NEPA, and other Federal, Tribal, State and local laws. See Appendix 1 of the RP/EIS for potentially applicable laws and regulations that govern the projects authorized and implemented under the Restoration Plan.

Future projects will comply with NEPA. The appropriate level of NEPA analysis will depend on each project's scope and potential environmental effects. NEPA compliance for individual restoration projects will be accomplished through tiered environmental assessments or other project-specific NEPA analyses. Future environmental review will focus on site-specific issues and impacts and will incorporate by reference the relevant aspects of the RP/EIS.

7.0 Pre-decisional Administrative Review

This decision is not subject to the USFS's pre-decisional administrative review regulations at 36 C.F.R. Part 218. The Part 218 regulations create a process for filing an objection to certain categories of "proposed actions of the Forest Service concerning projects and activities . . . ." 36 C.F.R. § 218.1. The Restoration Plan establishes an overall approach and project selection criteria. It establishes goals and objectives for projects, delineates the geographic area where projects can occur, and sets eligibility and selection screening criteria for projects. Because the Plan does not select or authorize any project or activity, it does not fall within the bounds of the Forest Service's pre-decisional administrative review process.

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