

**GRESHAM SAVAGE NOLAN & TILDEN**A PROFESSIONAL CORPORATION  
LAWYERS • FOUNDED 1910FOR THE FIRM  
James E. Good  
e-mail: Jim.Good@greshamsavage.com550 EAST HOSPITALITY LANE, SUITE 300  
SAN BERNARDINO, CALIFORNIA 92408-4205  
(909) 890-4499 • FACSIMILE (909) 890-2511  
[www.greshamsavage.com](http://www.greshamsavage.com)

January 2, 2009

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**U.S. Bureau of Land Management (BLM)  
El Centro Field Office  
1661 South Fourth Street  
El Centro, CA 92243-4561

Attn: Daniel Steward

Re: Sale of Padre Madre Waste Rock to Pyramid Construction Company;  
Environmental Assessment for Aggregate Surface Mine and Processing Facility,  
Number CA-670-2008-76

Dear Mr. Steward:

This firm represents M.K. Resources Company (formerly M.K. Gold), its affiliate American Girl Mining Joint Venture (AGMJV), the former operator of the American Girl Mine of which the Padre Madre Waste Rock sold to Pyramid Construction Company under Contract CACA 49292 was a part, and, in turn, the joint venture partners, M.K. and Eastmaque Gold Mines (U.S.) Corp., formerly a wholly owned subsidiary of Hecla Mining Company (now known as Hecla Limited) (“Hecla”).

This letter responds to the “Pyramid Construction Environmental Assessment” (EA), Plan of Operations and Reclamation Plan distributed by the BLM for public review and comment by January 5, 2009.

Attached as Exhibit 1 is a copy of the undersigned’s letter to the El Centro Resource Area Field Manager of August 7, 2008, expressing our concerns regarding the disturbance and off-site uses of this material without the indemnity from Pyramid Construction Company enclosed therewith, and the BLM’s waiver of all claim of liability of, or right to indemnity against, AGMJV, its joint venture partners and affiliates, for any conditions resulting from such disturbance and off-site uses. Those requirements are reiterated herein.

Also attached hereto as Exhibit 2 is a statement of AGMJV comments specifically addressing the EA, Plan of Operations and Reclamation Plan.

**GRESHAM SAVAGE NOLAN & TILDEN,**  
A PROFESSIONAL CORPORATION  
James E. Good

U.S. Bureau of Land Management (BLM)  
Attention: Daniel Steward  
January 2, 2009  
Page 2

The fundamental fact is that AGMJV closed the American Girl Mine and Padre Madre Waste Rock area as required by both the BLM and the County of Imperial, with the expectation that the waste rock would remain closed in place in a reclaimed and stable condition. However, without notice to AGMJV, MK or Hecla, on June 25, 2008, the BLM issued the above-referenced Material Sales Contract to Pyramid Construction Company. The potential legal liabilities for these entities from the disturbance and off-site use of this material is significant, including CERCLA liability, which attaches to any parties who once owned, controlled, or facilitated the disposition of hazardous substances or other contaminants ANYWHERE in ANY AMOUNT, including federal agencies. As stated in Exhibit 2, such off-site uses have not been adequately analyzed in the EA, and BLM has not met its burden of assuring that the proposed action is in the public interest, and that there are no hazards to public health and safety, as recited at page 2 of the EA.

Additionally, as a matter of policy and the public interest, the BLM should not permit such disturbance and off-site uses without appropriate consideration of the potential liability of AGMJV and its joint venture partners, as well as of the BLM, from the new generation and handling of this material by Pyramid Construction Company, without appropriate indemnity.

In short, we are not willing to share with Pyramid Construction Company, its contractors and subcontractors, and the BLM, the risks inherent in the disturbance and off-site uses of this material without a full analysis and indemnification and waiver as stated above.

Accordingly, M.K., Hecla and AGMJV protest the approval of the proposed Plan of Operations/Reclamation Plan and the adequacy of the EA in this matter, and are parties to the case for purposes of appeal under 43 CFR 4.410. My clients' forbearance from such an appeal would constitute a sufficient valuable consideration for the requested waiver from BLM. We are prepared to work with BLM on appropriate provisions to this effect.

Very truly yours,



James E. Good,  
GRESHAM SAVAGE  
NOLAN & TILDEN,  
A Professional Corporation

JEG/lr  
Enclosure: Attachments  
cc: Clients

**GRESHAM SAVAGE NOLAN & TILDEN**A PROFESSIONAL CORPORATION  
LAWYERS • FOUNDED 1910OF COUNSEL:  
James E. Good  
e-mail: Jim.Good@greshamsavage.com550 EAST HOSPITALITY LANE, SUITE 300  
SAN BERNARDINO, CALIFORNIA 92408-4205  
(909) 890-4490 • FACSIMILE (909) 890-2511  
www.greshamsavage.com

August 7, 2008

**VIA E-MAIL: Vicki\_Wood@ca.blm.gov  
and CERTIFIED MAIL -  
RETURN RECEIPT REQUESTED**Vicki L. Wood, Field Manager  
United States Bureau of Land Management  
El Centro Resource Area  
1661 South Fourth Street  
El Centro, CA 92243-4561

Re: Sale of Padre-Madre Mine Waste Rock; Contract Number CACA 49292

Dear Ms. Wood:

This firm represents M.K. Resources Company (formerly M.K. Gold) ("MK") and its affiliate American Girl Mining Joint Venture ("AGMJV"), the former operator of the American Girl Mine, of which the Padre-Madre Waste Rock was a part.

Mr. Larry Turner, as the AGMJV Mine Manager, wrote to Mr. Kevin Marty of your office and Ms. Patricia Valenzuela of the Imperial County Planning/Building Department on June 9, 2004, expressing AGMJV's objections and concerns regarding any disturbance and use of Padre Madre waste materials as an aggregate source.

After reviewing the BLM file for this matter, M.K. Resources and AGMJV continue to have these concerns with respect to handling the waste rock material and its ultimate disposition and use.

Although the Padre-Madre area was cleared by the BLM and County as duly closed in 1998, such handling and sale of the waste rock material presents, in our opinion, potential liability exposures for AGMJV and its joint venture partners, MK and Hecla Limited (formerly Hecla Mining company) ("Hecla"), as well as for the BLM. AGMJV had every right to expect that, with the approved closure the material would remain as reclaimed in place without further disturbance. We believe this should continue to be the case. In any event, we are prepared to contest any such disturbance without appropriate indemnity, and enclose for that purpose an indemnity agreement for execution by Pyramid Construction Company, indemnifying AGMJV

GRESHAM SAVAGE NOLAN & TILDEN,  
A PROFESSIONAL CORPORATION  
James E. Good

Vicki L. Wood, Field Manager  
United States Bureau of Land Management  
El Centro Resource Area  
August 7, 2008  
Page 2

and its joint venture partners MK and Hecla, against all liability in connection with the handling, removal, and use of this material pursuant to the sale contract. It is also appropriate that BLM waive all claim of liability of, or right to indemnity against, AGMJV and its joint venture partners for any conditions resulting from the disturbance, handling and removal of the rock materials, as left in place by AGMJV, and this should be included as part of the BLM approval of the Plan of Operations.

We consider this matter of such importance, that we would like to discuss it with you before the Plan of Operations approval process advances further. We can be available for a meeting with you on certain dates the weeks of August 18 and 25, in the afternoon. Please advise me of two optional dates and times as soon as possible.

In any event, please notify me of any and all public notices/opportunities for review/comment on proposed Granite Construction/Pyramid Construction activities pursuant to the sale contracts with those companies.

Very truly yours,



James E. Good, of  
GRESHAM SAVAGE  
NOLAN & TILDEN,  
A Professional Corporation

JEG/lr  
Enclosure  
cc: Clients

## ENVIRONMENTAL INDEMNITY AGREEMENT

THIS ENVIRONMENTAL INDEMNITY AGREEMENT is made as of \_\_\_\_\_, 2008, by and between PYRAMID CONSTRUCTION COMPANY (“PYRAMID”), 839 Dogwood Road, Heber, California 92249, and AMERICAN GIRL MINING JOINT VENTURE (“AGMJV”), 25 G Street, Salt Lake City, Utah 84103-2949.

WITNESS:

### RECITALS

A. The United States Department of the Interior, Bureau of Land Management, El Centro Field Office (“BLM”) has issued a Contract for the Sale of Mineral Materials, No. CACA 49292, to PYRAMID, executed on June 25, 2008, whereby BLM contracts to sell to PYRAMID 500,000 tons of “crushed sand and rock, Padre-Madre Mine Waste Rock”, located at the Padre-Madre area of the former American Girl Mine site in Imperial County, California.

B. AGMJV is the former owner/operator of the American Girl Mine and Padre-Madre Waste Rock. The aforementioned sale was made without notice to AGMJV.

C. The Padre-Madre Waste Rock area was duly closed in 1998 with the approval of the BLM and Imperial County, and left in place in a reclaimed and stable condition, and not for the purpose of further handling and removal of the material for offsite uses. Accordingly, AGMJV has objected to such handling and removal of the waste rock, and indicated its intent to formally protest, and appeal if necessary, BLM’s approval of any Plan of Operations for these purposes.

D. In order to remove AGMJV’s objection, and in consideration of this, PYRAMID is willing to extend to AGMJV and to its joint venture partners M.K. Resources, LLC (formerly M.K. Gold) (“MK”), and Eastmaque Gold Mines (U.S.) Corp., formerly a wholly owned subsidiary of Hecla Mining Company (now known as Hecla Limited) (“Hecla”), the indemnity set forth herein.

NOW, THEREFORE, PYRAMID agrees as follows:

1. **Definitions.** As used herein, the following terms shall have the meanings set forth below:
  - a. Environmental Laws. “Environmental Laws” means and includes any law, ordinance, regulation or requirement now or hereinafter in effect relating to land use, reclamation, air, soil, surface water, groundwater (including the protection, cleanup, removal, remediation or damage thereof), human health and safety, or any other environmental matter, including, without limitation, the following laws, and regulations thereunder, as the same may be amended from

time to time: Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), 42 U.S.C. §§ 9601 et seq.; Federal Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq.; Clean Water Act, 33 U.S.C. §§ 1251 et seq.; Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; Refuse Act 33 U.S.C. § 407; Occupational Safety and Health Act, 29 U.S.C. §§651 et seq.; Clean Air Act, 42 U.S.C. §§ 7401 et seq.; and the California Hazardous Waste Control Act, Health and Safety Code, Chapter 6.5; Hazardous Substance Account Act, Health and Safety Code, Chapter 6.8; and Water Quality Control Act, Water Code, Chapter 1.5.

b. Hazardous Substances. “Hazardous Substances” shall mean any hazardous or toxic substances, materials or wastes, pollutants or contaminants defined, listed or regulated by the Environmental Laws, or by any other federal, state or local law, regulation or order, or by common law decision.

c. Indemnified Costs. “Indemnified Costs” means all actual or threatened liabilities, claims, actions, causes of action, judgments, orders, damages, costs, expenses, fines penalties and losses (including foreseeable and unforeseeable consequential damages), (including sums paid in settlement of claims, and all consultant, expert and attorneys’ fees and expenses), including those incurred in connection with any investigation of site conditions, or any cleanup, remedial, removal or restoration work of any property, or any resulting damages, harm or injuries to the person or property of any third parties or to any natural resources, and of any additional reclamation and/or remediation of the Padre-Madre Waste Rock area.

2. Indemnity. PYRAMID, its parents, subsidiaries and affiliated companies, indemnify and hold AGMJV/MK/Hecla, and their parent, subsidiary, and affiliated companies, harmless from and against any and all Indemnified Costs, directly or indirectly arising out of or resulting from (a) any of PYRAMID’s activities in excavating, handling, and removing the Padre-Madre Waste Rock material or any other material removed by PYRAMID from the former American Girl Mine property, and; (b) from the disposition and use of such material, regardless of where and how applied, including any claim for such Indemnified Costs asserted by Federal, State or local authorities and agencies, and; (c) by any person who may purchase or use such material, or otherwise have it on its property, or have had it under its custody, care or control, including clean up costs, and; (d) resulting from currently existing conditions in, on or around the Padre-Madre Waste Rock area, whether known or unknown by PYRAMID or MK/AGMJV at the time this Agreement is executed.

3. Defense of Indemnified Parties. Upon demand by AGMJV and/or MK, and/or Hecla, PYRAMID shall defend any investigation, action or proceeding involving any matter covered by PYRAMID’s obligations hereunder which is brought or commenced against either such party, whether alone or together with PYRAMID or any other person, all at PYRAMID’s own cost and by counsel to be approved by such party in the exercise of reasonable judgment. In the alternative, AGMJV and/or MK and/or Hecla, as the subject party, may elect to conduct its own defense at the expense of PYRAMID.

4. **Costs and Expenses.** PYRAMID agrees to pay all of AGMJV's/MK's/Hecla's costs and expenses, including attorneys' fees and costs, which may be incurred in any effort to enforce any term of this Agreement, including all such costs which may be incurred by either of them in any legal action or arbitration proceeding (including an appeal).

PYRAMID CONSTRUCTION COMPANY

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

Its: \_\_\_\_\_

AMERICAN GIRL MINING JOINT VENTURE  
and for M.K. Resources, LLC and Hecla Limited

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

Its: \_\_\_\_\_

**AMERICAN GIRL MINING JOINT VENTURE COMMENTS**

**PYRAMID EA/POO/RECLAMATION PLAN – NOVEMBER 2008; CA-670-2008-76**

1. EA page 1, last paragraph – all documents state the Pyramid activities will be conducted on “lands disturbed by previous mining activities”. All such statements must also qualify that all such previously “disturbed” lands were reclaimed in compliance with all applicable permits and authorizations. Further, the documents must clearly spell out that all previous reclamation, and associated studies, solely addressed reclamation at the site and DID NOT address the off-site use of any mining materials. Certain parts of the documents do recognize past reclamation of the site, but the above qualification needs to appear where any mention of past disturbances is made.
2. EA page 2, RELATIONSHIPS TO STATUTES, REGULATIONS AND OTHER PLANS – the statement is made that “Any decision would assure that the action is in the public interest, that there are no hazards to public health and safety...” The EA does not contain a section addressing “public health and safety” for the potential off-site uses of the materials. Page 39 of the EA only addresses site activities as they relate to “public health and safety”. It is recognized that the use of the materials in asphalt or concrete is no realistic threat to either public health or safety, but the generic potential use of the material as “fill, rip-rap, or ballast” (EA Appendix B, page 2, first paragraph of CONCLUSIONS AND RECOMMENDATIONS) demands an evaluation of potential public health issues.
3. Page 10 of the EA, under AFFECTED ENVIRONMENT, it is stated that “Much of the background information has been derived from the 1988 EA/EIR”. It must be clarified that all permits and approvals for the past precious metals mining operations were based upon on-site reclamation/closure of all materials.
4. Page 11 of the EA, under “Waste and Hazardous Materials”, discusses “collection of five surface soil samples”. Our point is that surface samples, limited to “soils”, are not an adequate sampling of such a stockpile for either total cyanide or metals. Representative sampling can only occur with the use of mechanized drilling/boring equipment.
5. Comments on Table 5 of the EA: 1) “Crustal Abundance” on a global scale is not an adequate measure of comparison. For the generic potential off-site uses of the material (fill, rip-rap, or ballast), the comparison should be made of the native soils where the off-site uses will occur; 2) the “Human Toxic Concentration” only addresses safe levels of the metal after exposure (blood, urine, serum, plasma, red cells). For off-site uses, the California Human Health Screening Levels, Water Board Environmental Screening Levels, and U.S. EPA Region IX’s Preliminary Remediation Goals need to be utilized as guidance; 3) the units in the Table for “Crustal Abundance” and “Waste Rock Dump Assayed Concentration” appear to mix both parts per billion ((ppb) and parts per million (ppm). This makes the Table difficult to follow. All units should be converted to ppm and the Table headings

reflecting the units; 4) it appears the units for “Antimony” were not properly converted from the lab analysis results to ppb units (i.e. it appears the results are an order of magnitude too low), thus making the sample results many times higher than the “Crustal Abundance”.

6. The first paragraph under Table 5 (page 13) fails to mention that copper, lead, and molybdenum are also “2 to 8 times crustal abundance”. Also, as mentioned in sub comment 3) of comment 7 above, there are references for thresholds for substances in soils contrary to the statement made in the last sentence of this paragraph. We realize the TCLP test was applied to the “waste rock dump” material even though this material will be a product, and not a waste thus the test is not applicable, except perhaps as a guideline to examine characteristics as conducted for this EA. California has waste regulations beyond the EPA’s TCLP test. The CAM metals have not only soluble threshold limit concentration (STLC) values, which include non-TCLP metals such as zinc, molybdenum, copper, and antimony, but also total threshold limit concentration (TTLC) values that should be referenced for guidance purposes (Title 22, Division 4.5, Chapter 11, Article 1, §66261.24.(a)(2)).
7. Page 15 of the EA, first full paragraph – copper, molybdenum, and antimony need to be added to the list of arsenic, lead, mercury, and zinc as being above crustal abundance. Further, the fourth line of this paragraph appears to have “antimony” mentioned in place of “mercury”. In the last sentence, delete “... or used as fill, rip-rap, or ballast applications”, which has not been demonstrated. See 2, above.
8. Page 23 of the EA, under “Soils” – it is stated that “Native soils on the project site are covered with stockpiles from previous mining activity”. This statement is made in numerous sections of the EA (last sentence on page 17) and is misleading. The reclamation plan approved for the “previous mining activity” clearly states that no topsoil occurs on the site and that test plots were conducted prior to operations to identify site soils suitable for plant growth. Target soils suitable for plant growth were identified in these studies and these soil types were salvaged, from areas proposed to be disturbed, and stockpiled for subsequent use in reclamation efforts.
9. EA page 25, “Surface Water, Groundwater, and Water Quality” has no discussion on “Quality”, thus the section heading should delete the term. The same comment applies to this same heading on page 33 of the EA.
10. There is an inconsistency in the stated volumes of waste/reject materials from the proposed operations. The “Plant Reject Materials” section states waste is “no more than 5%”, yet on page 35 under Alternate B references a 30% waste rate. Further, the Reclamation Plan, table on page 6, shows “Tailings retained on site” of approximately 500,000 “cubic yards/tons”, at an inferred availability of one million cubic yards of material, thus a 50% waste rate.
11. Page 40 of the EA, CUMULATIVE IMPACTS, third paragraph – the concrete lining of the All American canal and conversion of the Union Pacific Railroad from

single track to double track “are not connected to the proposed action”. Will materials from the site be used in these two projects?

12. EA page 41, first full sentence – comparison is made between the proposed action and past precious metal mining by the American Girl Joint Venture (AGJV). Other such comparisons are made in the documents. Such comparisons are meaningless because the AGJV mining operations resulted in virtually all of the mined materials remaining on site, subject to approved reclamation requirements, except for the precious metal gold/silver product, which constituted a very small portion of a single percent of the mined materials. The proposed action will take millions of tons of material off-site for multiple uses, which may or may not be protective of human health and the environment.
13. The EA Technical Memorandum for total cyanide sampling makes mention of a specific concern raised by Structor’s Incorporated, yet there is no mention made of the specific concerns raised in the past by the AGJV representatives. These past correspondence documents are attached to and incorporated as comments to the EA. In addition, as stated in above comment 6 above, surficial samples of these materials, at depths of only “three to six inches of soil”, is not representative. Further, we are not surprised at the results as cyanide is rapidly degraded by atmospheric conditions.
14. Comments on the EA Appendix B Mineral Report:

Page 2, first paragraph – antimony, copper, and molybdenum need to be added to those metals elevated above crustal abundance. This same correction must be made to the first sentence under CONCLUSIONS AND RECOMMENDATIONS on this same page. Further, the leachate metals mentioned are “(arsenic, lead, and antimony)” and the EA Table 6 indicates these metals are arsenic, lead, and mercury. This evaluation must be expanded to include the concepts found in comments 7 and 8 above.

The last paragraph on this page makes a misleading statement that the “Mining of this rock waste material would have no different environmental affect than if the site were developed by primary quarry mining operations under the Materials Act of 1947”. First, the historic gold/silver mining targeted precious metals, which only exist at economic levels in very limited areas. Generic quarry material can be mined virtually anywhere, and this location would not be singled out just to mine quarry quality construction aggregates. Second, precious metal targets usually carry elevated levels of other heavy metals not found in generic quarry materials. Third, and most important, CERCLA liabilities do not follow benign generic quarry aggregates that do not contain certain target metals above certain thresholds. These concerns are addressed in the attached additional correspondence documents referenced in comment 16.

The Table 1 values (page 7) are confusing and do not match the STLC and TTLC values found for these elements at Title 22, Division 4.5, Chapter 11, Article 1,

§66261.24.(a)(2). Our reference point is the online version of this citation available December 2008 on the California state website.

Page 8 – the sampling comments from comment 6 apply here. Also, the last few sentences have “Moreno” and “Morevo” – we assume the latter is misspelled.

Page 9, Table 3 – comment 7 above applies here also. In addition, TTLC values should also be evaluated for these metals.

Page 11, second paragraph – the references from comment 7.2) above apply here. In addition, the fourth paragraph needs to be modified to reflect the STLC values for all the CAM metals.

Page 12, first full sentence – per comment 7.4) above, the antimony results appear to be an order of magnitude low, thus all samples well above the crustal abundance for antimony. Therefore, mitigation by “directing mining away from” these areas is problematic.

Page 12, Table 4 appears to have the correct STLC values, thus making the Table 1 “Reporting Limit” column more confusing. In addition, the last sentence of the paragraph beneath Table 1 confuses the issue that the Pyramid product will not be a waste material, regardless of the test results.

15. Plan of Operations/Reclamation Plan comments:

Production annual rates and life of the operations do not appear to be consistent. The materials award to Pyramid is 500,000 tons. Generally speaking, waste rock is in excess of 1 ton/cubic yard, thus less than 500,000 cubic yards of material. Page 5 of the Reclamation Plan, Section 16, gives an estimated annual extraction rate of “500,000” cubic yards, thus the award amount is consumed within a year. The maximum daily production rate is given as 4,500 cubic yards, which could consume the award amount within 1/3 year. Table 3-1 of the POO gives a 10 year life of the operation. The Reclamation Plan at page 5, Section 17, also gives an estimated total volume available of “one million cubic yards”. It is not at all clear what the actual production rates and project life will be given either the award amount or the available volume of material. These issues would appear to be critical for air permitting purposes, let alone giving the public a clear picture of what is intended for the proposed operation. We recognize the cyclical nature of the business but the numbers do not make sense.

Page 6-4, first paragraph under “Soils Resources” makes the same misleading statement concerning “Native soils” as commented on above at comment 10. The Reclamation Plan at Section 3.C, last sentence, 3.H, third sentence, and 6.D, third sentence, have the same statement.

Page 6-5, first sentence under “Vegetation” again, is very misleading. This sentence speaks of a “highly disturbed” area without mentioning the successful reclamation efforts in compliance with an agency-approved reclamation plan.

Further, this sentence mentions “abandoned mine spoils and tailings” as if the prior operators simply walked off the site. This same statement is made in the Reclamation Plan, first sentence of Section 3.J. This site represents many years of costly reclamation which, we may add, won a reclamation award.

## RESPONSE TO COMMENTS

Response to comments in response to Padre-Madre Waste Stockpile Pyramid Construction and Aggregates Mineral Material Contract Sample Report, Environmental Assessment, and Mine and Reclamation Plan by Jim Good, representing M.K. Resources Company (formerly M.K. Gold), its affiliate American Girl Mining Joint Venture (AGMJV), and, M.K. and Eastmaque Gold Mines (U.S.) Corp., formerly a wholly owned subsidiary of Hecla Mining Company (now known as Hecla Limited) (“Hecla”).

1. Comment: EA page 1, last paragraph all documents state the Pyramid activities will be conducted on “lands disturbed by previous mining activities”. All such statements must also qualify that all such previously “disturbed” lands were reclaimed in compliance with all applicable permits and authorizations. Further, the documents must clearly spell out that all previous reclamation, and associated studies, solely addressed reclamation at the site and DID NOT address the off-site use of any mining materials. Certain parts of the documents do recognize past reclamation of the site, but the above qualification needs to appear where any mention of past disturbances is made.

Response: The record of decision will qualify that while the area has been disturbed by previous gold mining and processing activities, the site had been reclaimed in compliance with approved reclamation plans. While reclamation of previous gold mining activity met visual line and form goals of the reclamation plans, the waste rock features have changed the landscape from the original line and form of the pre-gold mining area. Part of BLM’s goal in the material contract is to soften and reduce, as much as possible, the reclaimed waste rock facility to conform as near as practicable to the line and form of pre-gold mining topography.

2. Comment: EA page 2, RELATIONSHIPS TO STATUTES, REGULATIONS AND OTHER PLANS the statement is made that “Any decision would assure that the action is in the public interest, that there are no hazards to public health and safety...” The EA does not contain a section addressing “public health and safety” for the potential off-site uses of the materials. Page 39 of the EA only addresses site activities as they relate to “public health and safety”. It is recognized that the use of the materials in asphalt or concrete is no realistic threat to either public health or safety, but the generic potential use of the material as “fill, rip-rap, or ballast” (EA Appendix B, page 2, first paragraph of CONCLUSIONS AND RECOMMENDATIONS) demands an evaluation of potential public health issues.

Response: As will be discussed in following statements, BLM has conducted the necessary testing of the materials that characterize the material as to its toxicity. This testing compliments previous work and supports that the rock material is not a hazardous or toxic substance that will adversely affect public health and safety. The EA will be corrected to reflect this subsequent work.

## RESPONSE TO COMMENTS

3. Comment: Page 10 of the EA, under AFFECTED ENVIRONMENT, it is stated that "Much of the background information has been derived from the 1988 EA/EIR". It must be clarified that all permits and approvals for the past precious metals mining operations were based upon on-site reclamation/closure of all materials.

Response: It is recognized that the processes for approval of the mine plan and reclamation plan (BLM plan of operation) developed the operating standards and standards of reclamation that have been complied with by AGJV. AGJV has been released from the period of liability for gold mining and processing operations at the subject waste rock pile. The EA will be corrected to reflect that aggregate operations are being proposed for areas of the Padre-Madre mine that had been adequately and completely reclaimed by the previous operator in compliance with federal and state regulations.

4. Comment: Page 11 of the EA, under "Waste and Hazardous Materials", discusses "collection of five surface soil samples". Our point is that surface samples, limited to "soils", are not an adequate sampling of such a stockpile for either total cyanide or metals. Representative sampling can only occur with the use of mechanized drilling/boring equipment.

Response: Soils is the wrong term for the samples taken and is corrected in the EA. The samples were collected and composited along four transects across the surface of the rock stockpile. Sample from the stockpile represent the compositional and size distribution of rock material at the site. The rock material collected was screen and represents size distribution of 60-73 percent plus ¼ inch. The intended use of the material is the plus ¼ inch material. No soil was sampled or analyzed. While borings would have been preferred, the character of the waste pile does not necessitate borings to characterize the rock as toxic or hazardous. Sampling and sample management of wastes and other materials for analysis and testing in California are pursuant to the sampling and processing protocols specified in chapter nine of the U.S. Environmental Protection Agency publication SW-846 (Test Methods for Evaluating Solid Waste, Physical/Chemical Methods). Publication SW-846 is generally considered the official guidance for analytical and sampling methods that are used to evaluate and classify materials under the RCRA regulations. SW-846 functions primarily as guidance for acceptable, although not required, methods to use in responding to RCRA-related sampling and analysis requirements. The waste rock stockpile is not a horizontally stratified deposit, and does not contain soil. As such, drilling or boring, as compared with compositing of samples collected along surface transect lines would provide no better or worse information about the stockpiled material. We feel that surface sampling for initial characterization of the material meets the requirements for sampling this type deposit for characterization as a toxic, hazardous material.

## RESPONSE TO COMMENTS

5. Comment: Table 5 of the EA: 1 “Crustal Abundance” on a global scale is not an adequate measure of comparison. For the generic potential off-site uses of the material (fill, rip-rap, or ballast), the comparison should be made of the native soils where the off-site uses will occur; 2) the “Human Toxic Concentration” only addresses safe levels of the metal after exposure (blood, urine, serum, plasma, red cells). For off-site uses, the California Human Health Screening Levels, Water Board Environmental Screening Levels, and U.S. EPA Region IX’s Preliminary Remediation Goals need to be utilized as guidance; 3) the units in the Table for “Crustal Abundance” and “Waste Rock Dump Assayed Concentration” appear to mix both parts per billion ((ppb) and parts per million (ppm). This makes the Table difficult to follow. All units should be converted to ppm and the Table headings reflecting the units; 4) it appears the units for “Antimony” were not properly converted from the lab analysis results to ppb units (i.e. it appears the results are an order of magnitude too low), thus making the sample results many times higher than the “Crustal Abundance”.

Response: The use of crustal abundance and human toxicity were for illustrative purposes. We agree that the Human toxicity levels are not relevant to the purpose of this review. Table 5 of the EA will be replaced with a more detailed table corrected to assure that all measures are in parts per billion (ppb), and all results corrected to reflect this unit.

6. Comment: The first paragraph under Table 5 (page 13) fails to mention that copper, lead, and molybdenum are also “2 to 8 times crustal abundance”. Also, as mentioned in sub comment 3) of comment 7 above, there are references for thresholds for substances in soils contrary to the statement made in the last sentence of this paragraph. We realize the TCLP test was applied to the “waste rock dump” material even though this material will be a product, and not a waste thus the test is not applicable, except perhaps as a guideline to examine characteristics as conducted for this EA. California has waste regulations beyond the EPA’s TCLP test. The CAM metals have not only soluble threshold limit concentration (STLC) values, which include non-TCLP metals such as zinc, molybdenum, copper, and antimony, but also total threshold limit concentration (TTLC) values that should be referenced for guidance purposes (Title 22, Division 4.5, Chapter 11, Article 1, §66261.24.(a)(2)).

Response: The EA will substitute Table 5 with a more comprehensive table reflecting subsequent waste extraction testing (WET), and STLC and TTLC threshold limits used for the classification of hazardous waste in California.

7. Comment: Page 15 of the EA, first full paragraph copper, molybdenum, and antimony need to be added to the list of arsenic, lead, mercury, and zinc as being above crustal abundance. Further, the fourth line of this paragraph appears to have “antimony” mentioned in place of “mercury”. In the last sentence, delete or

## RESPONSE TO COMMENTS

used as fill, riprap, or ballast applications”, which has not been demonstrated. See 2, above.

Response: Table 6 will be removed and substituted with a statement that subsequent WET was done on all CAM 17 metals (including mercury).

8. Comment: Page 23 of the EA, under “Soils” it is stated that “Native soils on the project site are covered with stockpiles from previous mining activity”. This statement is made in numerous sections of the EA (last sentence on page 17) and is misleading. The reclamation plan approved for the “previous mining activity” clearly states that no topsoil occurs on the site and that test plots were conducted prior to operations to identify site soils suitable for plant growth. Target soils suitable for plant growth were identified in these studies and these soil types were salvaged, from areas proposed to be disturbed, and stockpiled for subsequent use in reclamation efforts.

Response: The EA will be corrected to state that native soils in the area proposed for disturbance under the Padre-Madre plan of operation were removed and stockpiled for reclamation. However, there are no soils within the site of the waste rock stockpile

9. Comment: EA page 25, “Surface Water, Groundwater, and Water Quality” has no discussion on “Quality”, thus the section heading should delete the term. The same comment applies to this same heading on page 33 of the EA.

Response: The term will be qualified if groundwater quality data are available or the term will be eliminated.

10. Comment: There is an inconsistency in the stated volumes of waste/reject materials from the proposed operations. The “Plant Reject Materials” section states waste is “no more than 5%”, yet on page 35 under Alternate B references a 30% waste rate. Further, the Reclamation Plan, table on page 6, shows “Tailings retained on site” of approximately 500,000 “cubic yards/tons”, at an inferred availability of one million cubic yards of material, thus a 50% waste rate.

Response: As proposed, there is an estimated 30 percent of the waste rock material that would not be directed off-site for salable product. Approximately 25 percent of the waste (minus ¼ inch material, including crusher fines) will be screened off, and another 5 percent washed and disposed in ponds. Corrections to this ratio will be made as information on the size distribution and potential markets are further identified. The “Plant Reject Materials” section will be corrected to reflect the proposed action.

## RESPONSE TO COMMENTS

11. Comment: Page 40 of the EA, CUMULATIVE IMPACTS, third paragraph the concrete lining of the All American canal and conversion of the Union Pacific Railroad from single track to double track “are not connected to the proposed action”. Will materials from the site be used in these two projects?

Response: The proposed markets have changed, and at this time the material will potentially be directed into portland cement and asphalt concretes, as general construction and road base mixes, and ballast. There is no intent at this time to use the material for filter media, landscape cover, or rip-rap for stabilization of canals or aqueducts in the market area.

12. Comment: EA page 41, first full sentence comparison is made between the proposed action and past precious metal mining by the American Girl Joint Venture (AGJV). Other such comparisons are made in the documents. Such comparisons are meaningless because the AGJV mining operations resulted in virtually all of the mined materials remaining on site, subject to approved reclamation requirements, except for the precious metal gold/silver product, which constituted a very small portion of a single percent of the mined materials. The proposed action will take millions of tons of material off-site for multiple uses, which may or may not be protective of human health and the environment.

Response: These comparisons are valid and used to compare mining activity intensity with respect to air resource impacts, surface disturbance, and emissions between the two degrees of activity within the Padre-Madre site.

13. Comment: The EA Technical Memorandum for total cyanide sampling makes mention of a specific concern raised by Structor’s Incorporated, yet there is no mention made of the specific concerns raised in the past by the AGJV representatives. These past correspondence documents are attached to and incorporated as comments to the EA. In addition, as stated in above comment 6 above, surficial samples of these materials, at depths of only “three to six inches of soil”, is not representative. Further, we are not surprised at the results as cyanide is rapidly degraded by atmospheric conditions.

Response: All reference to the cyanide testing by Structor’s will be removed as cyanide does not occur in the waste rock stockpile, or will cyanide affect the human and or natural environment as a result of excavation and or material processing operations at the waste rock stockpile. Regarding the comment on the surficial samples not being representative, sampling and sample management of wastes and other materials for analysis and testing in California are pursuant to the sampling and processing protocols specified in chapter nine of the U.S. Environmental Protection Agency publication SW-846 (Test Methods for Evaluating Solid Waste, Physical/Chemical Methods). Publication SW-846 is generally considered the official guidance for analytical and sampling methods that are used to evaluate and classify materials under the RCRA regulations.

## RESPONSE TO COMMENTS

SW-846 functions primarily as guidance for acceptable, although not required, methods to use in responding to RCRA-related sampling and analysis requirements. The waste rock stockpile is not a horizontally stratified deposit, and does not contain soil. As such, drilling or boring, as compared with compositing of samples collected along surface transect lines would provide no better or worse information. We feel that surface sampling for initial characterization of the material meets the requirements for sampling this type deposit for characterization as a toxic and hazardous material.

14. Comments on the EA Appendix B Mineral Report:

- a. Comment: Page 2, first paragraph antimony, copper, and molybdenum need to be added to those metals elevated above crustal abundance. This same correction must be made to the first sentence under CONCLUSIONS AND RECOMMENDATIONS on this same page. Further, the leachate metals mentioned are “(arsenic, lead, and antimony)” and the EA Table 6 indicates these metals are arsenic, lead, and mercury. This evaluation must be expanded to include the concepts found in comments 7 and 8 above.

Response: All samples were subsequently analyzed by WET on all CAM 17 metals (including mercury; STLC limits testing). Results are shown in Table A to the amendment for the mineral report.

- b. Comment: The last paragraph on this page makes a misleading statement that the “Mining of this rock waste material would have no different environmental affect than if the site were developed by primary quarry mining operations under the Materials Act of 1947”. First, the historic gold/silver mining targeted precious metals, which only exist at economic levels in very limited areas. Generic quarry material can be mined virtually anywhere, and this location would not be singled out just to mine quarry quality construction aggregates. Second, precious metal targets usually carry elevated levels of other heavy metals not found in generic quarry materials. Third, and most important, CERCLA liabilities do not follow benign generic quarry aggregates that do not contain certain target metals above certain thresholds. These concerns are addressed in the attached additional correspondence documents referenced in comment 16.

Response: The argument is that mining the same material for aggregate by quarry operations, considered waste under gold mining operations, would create no difference in compliance with health and safety laws, than mining and processing under the proposed action. This is true. We agree in part with the comment in that precious metal targets carry elevated levels of other heavy metals not found in generic quarry materials. For that reason, as well as for all Mineral Material Act disposal of material of similar character, compliance with California protocols would be necessary to assure that the material does not result in a toxic and hazardous release. As such, if the area were mined

## RESPONSE TO COMMENTS

primarily for crushed rock by quarry operations, assurances that the material is not toxic and hazardous in end use applications would be required. This is clarified in the supplement to the November 19, 2008, mineral report.

- c. Comment: The Table 1 values (page 7) are confusing and do not match the STLC and TTLC values found for these elements at Title 22, Division 4.5, Chapter 11, Article 1, EXHIBIT 2 §66261.24.(a)(2). Our reference point is the online version of this citation available December 2008 on the California state website.

Response: Table 1, page 7 of the Mineral Report inadvertently used laboratory reporting limits rather than STLC and TTLC threshold limits. This is corrected in Table A in the supplemental report using the threshold limits provided in Section 66261.24(a)(2), Table II (California Code of Regulations, Title 22, Division 4.5, Chapter 11, Article 3-2).

- d. Comment: Page 8 the sampling comments from comment 6 apply here. Also, the last few sentences have “Moreno” and “Morevo” we assume the latter is misspelled.

Response: Corrected.

- e. Page 9, Table 3 comment 7 above applies here also. In addition, TTLC values should also be evaluated for these metals.

Response: The amended mineral report shows the TTLC and STLC values for tests run in October 2008 (TTLC) and January 2009 (WET).

- f. Comment: Page 11, second paragraph the references from comment 7.2) above apply here. In addition, the fourth paragraph needs to be modified to reflect the STLC values for all the CAM metals.

Response: The amended mineral report shows the TTLC and STLC values for tests run in October 2008 (TTLC) and January 2009 (WET).

- g. Comment: Page 12, first full sentence per comment 7.4) above, the antimony results appear to be an order of magnitude low, thus all samples well above the crustal abundance for antimony. Therefore, mitigation by “directing mining away from” these areas is problematic.

Response: Results were corrected for all CAM 17 metals (including mercury) in the supplemental mineral report. While crustal abundance comparatives are illustrational, the toxic limits for the CAM 17 metals (including mercury) will be used to direct mining. From our results, the waste rock stockpile is not considered toxic or hazardous.

## RESPONSE TO COMMENTS

- h. Comment: Page 12, Table 4 appears to have the correct STLC values, thus making the Table 1 "Reporting Limit" column more confusing. In addition, the last sentence of the paragraph beneath Table 1 confuses the issue that the Pyramid product will not be a waste material, regardless of the test results.

Response: Table A in the supplemental mineral report has corrected earlier deficiencies in the mineral report of November 2008. Both the TTLC and STLC threshold limits are provided in compliance with Section 66261.24(a)(2), Table II, Characteristic of Toxicity, of the California Code of Regulations (Title 22, Division 4.5, Chapter 11, Article 3). Results show that none of the limits have been exceeded, and in conclusion, the material is not classified as toxic.

15. Comment: Plan of Operations/Reclamation Plan comments:

- a. Comment: Production annual rates and life of the operations do not appear to be consistent. The materials award to Pyramid is 500,000 tons. Generally speaking, waste rock is in excess of 1 ton/cubic yard, thus less than 500,000 cubic yards of material. Page 5 of the Reclamation Plan, Section 16, gives an estimated annual extraction rate of "500,000" cubic yards, thus the award amount is consumed within a year. The maximum daily production rate is given as 4,500 cubic yards, which could consume the award amount within 1/3 year. Table 3-1 of the P00 gives a 10 year life of the operation. The Reclamation Plan at page 5, Section 17, also gives an estimated total volume available of "one million cubic yards". It is not at all clear what the actual production rates and project life will be given either the award amount or the available volume of material. These issues would appear to be critical for air permitting purposes, let alone giving the public a clear picture of what is intended for the proposed operation. We recognize the cyclical nature of the business but the numbers do not make sense.

Response: The plan of operation will be corrected to better explain the BLM's mineral material operations. We estimate that approximately 1,000,000 tons of material remains on the site. The subject contract specifies that the contract amount is 500,000 cubic yards, severed and removed. It does not include waste materials that are to be disposed into the site. Under BLM regulations, and the terms of the competitive contract awarded, the operator may proceed to mine up to 4,500 cubic yards daily until the 500,000 cubic yards are removed, or until the contract expires by its own terms. If material remains after termination of the contract, the contract holder is entitled to renew the contract under specified conditions, and a term not to exceed 10 years.

## RESPONSE TO COMMENTS

- b. Comment: Page 6-4, first paragraph under “Soils Resources” makes the same misleading statement concerning “Native soils” as commented on above at comment 10. The Reclamation Plan at Section 3.C, last sentence, 3.H, third sentence, and 6.D, third sentence, have the same statement.

Response: The Plan of Operation/Reclamation Plan will be corrected to state that native soils in the area proposed for disturbance under the Padre-Madre plan of operation were removed and stockpiled for reclamation.

- c. Comment: Page 6-5, first sentence under “Vegetation” again, is very misleading. This sentence speaks of a “highly disturbed” area without mentioning the successful reclamation efforts in compliance with an agency-approved reclamation plan. Further, this sentence mentions “abandoned mine spoils and tailings” as if the prior operators simply walked off the site. This same statement is made in the Reclamation Plan, first sentence of Section 3.J. This site represents many years of costly reclamation which, we may add, won a reclamation award.

Response: The Plan of Operation/Reclamation Plan will be corrected to state that the area has been reclaimed in compliance with the approved plans of operation and reclamation plans at the time of mine closure. We agree that there has been considerable effort to reclaim the mine and disposal areas to a condition as near as practicable to that which existed prior to mining. It is BLM’s intent in the disposal of a portion of the waste rock pile under the subject contract to enhance work previously done by removal of waste rock material to a level as close as possible to pre-gold mining topography. We feel that by offering the material for disposal, the increased costs to remove this material will not be a burden on the United States, and will leave the area in a condition that more closely represents pre-gold mining activity.