

February 11, 2011

RE: *Planetary Solutionaries* Preliminary Statements and Comments on Conda/Woodall Mountain Mine Pedro Creek Overburden Disposal Area "Cleanup Plan" – Early Action



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Attention: Ms. Fran Allans and Ms. Margie English

Following are the comments of Planetary Solutionaries (PS), in lieu of Porgans & Associates (P&A), regarding Idaho Department of Environmental Quality (DEQ) and the Environmental Protection Agency's (EPA), Region 10, invitation for public comments on Conda/Woodall Mountain Mine Pedro Creek Overburden Disposal Area "Cleanup Plan" – Early Action

Introductory Statement: The following comments are being offered by *Planetary Solutionaries* (PS), in regards to the above referenced subject, in lieu of comments submitted heretofore by Porgans & Associates, Inc.; a California Corporation that had recently been dissolved. PS's comments, as a matter of necessity, should be viewed as preliminary in nature and are prefaced on the caveat that a more in-depth response would have been submitted; however, the government-industry imposed limitation (30-day comment period) and the lack of notification as to the "invitation" to comment, pre-empted this option. Also, although Porgans & Associates (P&A), has been actively involved in the government-industry-induced phosphate-selenium disaster since it surfaced back in the late 1990s, and interacted with the designated governmental entities, throughout that period, it was not notified of the so-called "cleanup plan" or "early action"; this notice/invitation was inadvertently brought to PS and P&A's attention, late last week. It was at that time that we received the Idaho Department of Environmental Quality (DEQ) and U.S. Environmental Protection Agency (EPA's), Region 10, "Fact Sheet, Conda/Woodall Mountain Mine Pedro Creek Overburden Disposal Area, Cleanup Plan," which was dated 10 Jan 2011.

This Monday we initiated contact with the EPA and DEQ personnel, listed on the contact sheet, and made numerous unsuccessful attempts to ascertain the specific documents and supporting data referenced in the "Fact Sheet" at the listed website. The address listed in the Fact Sheet, on page one (1), is www.deq.idaho.gov/PedroCreekODA. On late Tuesday, we received the referenced documents and appendices from EPA's community coordinator, via e-mail, in a PDF format. Suffice it to say there were six (6) separate files containing a total of 15.92 MB and 766.72 KB. On that same day, EPA's Conda Mine manager returned the telephone call, at which time we discussed the issue of notification, comment deadline, and an overview of the "cleanup plan". PS explained that it planned to submit

comments on 9 Jan., however, it would be hard pressed to do so. Ms. Allans' granted an extension to submit comment until the 11 Feb. P&S confirmed Ms. Allans' grant for the extension via e-mail. Therefore, with the aforementioned thoughts in mind, PS respectfully submits the following statements and comments.

STATEMENT I: EPA/DEQ "Early Action" Cleanup Plan" Preferred Alternative Four (4), reads as follows:

Cleanup of the Pedro Creek ODA

*The cleanup of the Pedro Creek ODA is only a portion of the **cleanup** work that will be done at the Conda-Woodall Mountain Mine site. In response to the instability and potential risks associated with releases of selenium and other contaminants to surface water and groundwater from the Pedro Creek ODA, DEQ and EPA have decided to cleanup the ODA as an **early action.**"*¹

COMMENT I: Although difficult, it is conceivable that under some interpretation of bureaucratize that the definition of "cleanup" as in the Pedro Creek ODA "Cleanup Plan" could be construed as a "cleanup action"; however, it would appear more accurate to describe it as a "stabilizing action", which appears to have some semblance of containment, and on the far-flung margins the potential of a uncertain, yet-to-be-proven remediation component. However, to identify it as an "early action" is without question, perplexing, disconcerting, and alarming.

On the face of it, it is somewhat disingenuous for the government to refer to the action as a "cleanup", because by its own admission, the "plan" is more about a "cover up"; as described in Alternatives 2, 3, 4, 5, and 6.

It is also important to reiterate on the following fact that the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA) process was initiated back in 1997. Heretofore P&A submitted comments in response to the government's solicitations for public comments. The record attests to the fact that in 1977, the U.S. Geological Survey identified high levels of selenium contamination, in the Phosphoria Formation in Southeastern Idaho, in its programmatic Environmental Impact Statement. However, the toxic results of this widespread contamination surfaced in 1996 at Dry Valley Mine site, and in 1997 at the Conda Mine site, resulting in the death of hundreds of animals from selenium poisoning. Albeit, it has been more than 13 years since the CERCLA proceeding was initiated, and yet the government has not only failed to provide a viable solution to the existing phosphate mining-selenium disaster, it has actually permitted thousands of acres of new phosphate mining activities, at mine sites where remediation and cleanup has yet to be facilitated.² It took government/industry 13 years to conjure up the co-called "early action-cleanup plan", which essentially

¹ Idaho Department of Environmental Quality and U.S. Environmental Protection Agency, Region 10, **Fact Sheet, Conda/Woodall Mountain Mine Pedro Creek Overburden Disposal Area, Cleanup Plan**, 10 Jan 2011, p.3.

² There have been several major expansions of phosphate mining on publicly owned lands, South Rasmussen, North Rasmussen Ridge, Dry Valley, Monsanto Blackfoot Bridge, and Smokey Canyon mines, involving thousands of new acres, since the selenium problem became a matter of public concern. There is also a pending lease expansion for the Dairy Syncline Phosphate Lease area, involving J.R. Simplot.

is a well-known method that involves slope stabilization, containment, and monitoring, which, historically, has had its own fair share of problems!

In 1997, government said that it intervened in the CERCLA process to ensure that the selenium contamination would be dealt with thoroughly and expeditiously!

*“Early industry cooperation was good for public relations and the regulatory agencies because the phosphate industry was able to rapidly provide financial support where government funding would have taken time. Early action in 1997 demonstrated that the companies and their government partners were anxious to address the problem. **Delays resulting from endless debate would have been counterproductive and led to public distrust of both the agencies and the phosphate mining industry. Rapid resolution to bring contaminant releases into compliance were considered necessary to protect a critical national resource.**”*³
[Emphasis added.]

STATEMENT II: Why a Cleanup Action is Being Proposed for the ODA

Run-on/runoff controls, grading and vegetated soil cover, would reduce infiltration of rainfall and snowmelt into the ODA materials. As shown in Appendix C, it is estimated that water entering the ODA materials will be reduced by 85 percent relative to current conditions. This would be expected to have a corresponding reduction in selenium releases from the ODA by this pathway and will contribute to meeting MCLs in groundwater and surface water quality standards in Pedro Creek.

*Alternative 4 is expected to reduce loading of selenium to downgradient waters due to reduction of infiltration, increased stability and reduced erosion. Monitoring downgradient from the ODA would be used to determine the effectiveness of this alternative at reducing concentrations of selenium and other COPCs in groundwater, surface water, and sediments.*⁴

*The materials placed on the steep side slopes are unstable and are subject to erosion as well as movement of large quantities of overburden/waste rock down slope. **A similarly constructed ODA failed in the north of the Pedro Creek ODA during the 1970s, resulting in a large quantity of waste rock moving down***

³ Jeffrey L. Jones, Caribou-Targhee National Forest, Soda Springs and Brian W. Buck, JBR Environmental Consultants, Inc., *Interagency-Industry Coordination to Respond to Selenium Contamination in Southeastern Idaho*, circa 2004-2005, <http://www.fs.fed.us/geology/buck-jones.pdf>.

⁴ Formation Environmental, LLC, *FINAL, Conda/Woodall Mountain Mine Pedro Creek Overburden Disposal, Area Early Action, Engineering Evaluation/Cost Analysis*, Prepared for J.R. Simplot Company, October 26, 2010, pp. 43 and 44.

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*slope. Waste rock is visible beyond the toe of Pedro Creek ODA indicating some down slope movement has already occurred.*⁵ [Emphasis added.]

COMMENT II: EPA, DEQ, and Simplot, assert that the “preferred alternative – 4” will reduce the levels of selenium and other toxic contaminants. However, neither provide tried and proven “scientific data” to quantify the reduction(s) that are purportedly to be realized, nor the documentation that supports the fact that such an alternative is a viable long-term remedy to ensure “compliance” with the water quality objectives/standards pursuant to the provisions of the Clean Water Act (CWA).

STATEMENT III:

*Alternative 4 is protective of human health and the environment, and will contribute toward meeting water quality standards for both surface water and groundwater. The alternative is effective in both the long term and short term, it is implementable from both a technical and administrative standpoint and is the most cost-effective at reducing infiltration. Alternative 4 is expected to be consistent with the final action for the Pedro Creek area. The agencies will determine in a final Record of Decision whether additional cleanup actions are necessary to address surface water, groundwater, and/or vegetation on the basis of monitoring conducted after the early action, and information generated during the RI/FS.*⁶

Alternative 4 would provide for reduction of infiltration relative to existing conditions, through improved run-on and runoff management, ultimately resulting in reduction of pooling and infiltration and corresponding releases of COPCs to surface water and groundwater. Construction can be accomplished using standard earthmoving methods and associated BMPs that should not impose unacceptable risks to workers or other receptors.

Compliance with ARARs – *A summary of how Alternative 4 meets the key applicable and the key relevant and appropriate requirements is discussed in the following text. Table 6-2 summarizes how the alternative meets the remaining ARARs. Compliance with the ARARs would be achieved by consultation with the agencies and documentation generated as part of the design and implementation of the action.*

Applicable ARARs – *The applicable ARARs include the promulgated federal and State surface water and groundwater quality standards (Table 5-1) and NPDES Permit Regulations. Runon/runoff controls, regrading and surface vegetation would reduce infiltration of rainfall and snowmelt into the ODA by an estimated*

⁵ Idaho Department of Environmental Quality and U.S. Environmental Protection Agency, Region 10, **Fact Sheet, Conda/Woodall Mountain Mine Pedro Creek Overburden Disposal Area, Cleanup Plan**, 10 Jan 2011, p.2.

⁶ Idaho Department of Environmental Quality and U.S. Environmental Protection Agency, Region 10, **Fact Sheet, Conda/Woodall Mountain Mine Pedro Creek Overburden Disposal Area, Cleanup Plan**, 10 Jan 2011, p.5.

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85 percent compared to current conditions. This reduction of infiltration into the ODA would reduce the release of COPCs to groundwater and surface water and would contribute toward meeting the requirements of these ARARs.

Postconstruction monitoring would be implemented to assess progress toward compliance with these requirements and any additional actions necessary to meet these ARARs will be addressed as part of the RI/FS.

COMMENT III: At this time, it is unclear as to whether the model and or the assumptions provided by Simplot’s consultant have either been peer reviewed or substantiated with any real degree of scientific certainty. However, what is evident, prefaced on its own statements, Alternative 4, would “reduce” the releases of COCPs to groundwater and surface water, but it does not provide assurances that compliance with the provisions of the CWA will be obtainable; either from the site specific or regional wide perspective.

Planetary Solutionaries Concur with Greater Yellowstone Coalition’s Comments on Alt. 4:

Alternatives 4 – 6

*Since effectiveness and cost are both considered for the Pedro Creek and other removal actions we believe this proposal would benefit from a more in-depth assessment of the failure of Alternative 4 to attain the projected 85 percent abatement of selenium released to ground and surface waters, and the what the higher costs to address such a failure would be, whether as another stand-alone removal action or incorporated in the future remedies identified in the on-going RI/FS. **For example recently permitted and proposed mine/mine expansions have rejected capping designs similar to or even more robust than that proposed in Alternative 4, and instead have adopted much more robust caps.** [Emphasis added.]*

As examples:

- The cover design for the 2000 Dry Valley Mine South Extension required a minimum cap thickness of two feet.*
- The cover design for the North Rasmussen Ridge Mine would be “two to three feet” of growth medium over 8 to 10 feet of chert.*
- The cover design for the Smoky Canyon Mine Panels F & G Expansion is an engineered store and release cover system at least six feet in thickness.*
- The proposed cap for Monsanto’s Blackfoot Bridge Mine includes a geosynthetic liner over all of the seleniferous waste material.*

In all cases these caps were adopted because cap designs similar to Alternative 4 were determined to be inadequate in preventing selenium being leached from dumps and pit backfill. And in those other cases the caps were to be installed over “designed” disposal sites rather than a dump such as the Pedro Creek ODA

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which is a result of nothing more than dumping unconsolidated material over an embankment and letting gravity do the rest. [Emphasis added.]

Given the ineffectiveness of cover designs, such as that contained in Alternative 4, the risk of short and long term failure seems quite high. The EE/CA should have included a disclosure of the costs associated with the likely failure. Those costs should include the loss, and need for replacement, of virtually all the topsoil, since it could well be unusable in the future due to contamination by Se and/or the inability to salvage a significant quantity from the site if the cap proves ineffective.

*We believe that the agencies have erred in assuming a simple cap, as proposed in Alt. 4, placed over an unconsolidated and relatively unstable (even with regrading the dump will remain somewhat unstable given the possibility of seismic activity in the area) pile of waste material will provide an 85 percent reduction in selenium releases. Meteoric water will continue to fall upon and leach through the dump regardless of run-on controls and the regrading of the areas where pooling occurs on the top of the dump. In the case of the Smoky Canyon Mine expansion meteoric water was the biggest concern. Why would this site be different?*⁷ [Emphasis added.]

PS does not accept any of the alternatives as being an effective means to remediate the contamination or as viable solutions to meet the provisions pursuant to the Clean Water Act. Albeit, in the absence of said, it would support Alternative 5 as a “structural fix – “top-gap” measure - that has the potential of containing selenium discharges from the 60 acre ODA site”; however, realizing also that any such reduction, as proposed, appears to be insufficient to bring the discharges into compliance with the CWA.

COMMENT IV: Regarding Ongoing Yet-to-Be Completed Remedial Investigation and Feasibility Studies(FI/FS)

By the government’s own admission the Remedial Investigation/Feasibility Study (RI/FS) are still ongoing for the Conda-Woodall Mine Site, and is not expected to be completed until 2013.

There are still valid uncertainties relative to the basis and “scientific” quantification of the 85 percent reduction of selenium purportedly to be realized by the implementation of Alternative 4, enumerated by J.R. Simplot’s consultants. Even in the absence of such data, and even with the suggested assurances that additional water quality monitoring or related treatment action “may be” considered, at some later date, post RS/RI studies; notwithstanding, even IF an 85 percent reduction is to be realized from the “stabilization” and “containment” effort, as proposed on the 60 acre Pedro Creek ODA, neither this effort nor any other “action” taken or proposed by the government or the industry provides the basis in

⁷ Marv Hoyt, Idaho Director, Yellowstone Coalition correspondence to Margie English, Idaho Department of Environmental Quality, RE: *Comments on Conda/Woodall Mountain Mine Pedro Creek Overburden Disposal Area, January 24, 2011, p. 2.*

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fact that water quality standards for surface and or ground water will be complied with now or anytime in the foreseeable future. In fact, the rhetoric “purportedly” being espoused by the government and industry is that in order to meet the water quality standards there would have to be as much as a 99 percent reduction in selenium discharges to reach compliance; which, some entities claim is not only cost prohibitive, but with current technology may not be obtainable.

It would be disingenuous to refer to the “plan” as even a “stop-gap” measure, more aptly stated, it is a “top-gap” measure, which negates the “big picture” government-industry-induced decade in the making selenium “time-bomb” disaster, by attempting to showcase about 60 acres of “overburden disposal areas” (ODA) out of tens-of-thousands of contaminated acres, as representing a meaningful step forward. Conversely, it is apropos to remind EPA and DEQ et al that it has been 13 years since the CERCLA process was initiated, as a result of the death of livestock, grazing on public and private land, at South Maybe Mine and the Conda Mine sites, in southeastern Idaho, which is within the boundaries of the U.S. Western Phosphate Field.

EARLY ACTION” OR FATAL DELAY TACTIC”

“Early Action”! As previously stated, It is with all due respect, *PS* reiterates the fact that the CERCLA process, on this and other related phosphate mine sites, was initiated back in 1997, which was the result of the death of hundreds of animals, diagnosis with selenium poisoning.

PS empathizes with EPA and DEQ, and recognizes that there is a real need for the government to exercise some meaningful and substantive “action” to give the public some assurances that its public trust resources are going to be protected and that meaningful remediation and cleanup is forthcoming. However, to attempt to “showcase” 60 acres of ODA, out of several thousand square miles of potentially contaminated land, is viewed as contemptuous, disingenuous, and a bad display of public relations.

BUSINESS AS USUAL – CONTAMINATION UNABATED: CERCLA prompted era of endless Studies, and during the ensuing 13-year period, government officials and industry representatives have had countless meetings, endless discussions, consummated numerous agreements, conducted a myriad of

CERCLA Process Initiated in 1997

Selenosis in the horses pastured in Dry Valley prompted agency and public concern that selenium releases from phosphate mining was apparently an environmental and potential public health concern. A Preliminary Assessment of the South Maybe Mine in 1997 led the Forest Service to exercise their delegated authority to initiate action under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The current leaseholder was identified as the Potentially Responsible Party (PRP) for that site. In September 1997, the U.S. Forest Service entered into an Administrative Order on Consent (AOC) for the South Maybe Mine with the leaseholder to conduct a Site Investigation (SI) and Engineering Evaluation/ Cost Analysis (EE/CA) under CERCLA. (Source: Ibid., <http://www.fs.fed.us/geology/buck-jones.pdf>.)

studies, and generated a plethora of reports. However, they conceded that the "data" and/or information are coming in so fast that it is difficult to comprehend let alone digest. In the same breath officials were quick to point out that in spite of all of the effort, **factual conclusions are still to be made on much of the data**,⁸ essentially, it is premature to draw conclusions relative to the disposition of the 100-year in-the-making government-industry induced selenium disaster. More importantly, it does not appear that any of the millions of tons of contaminated soils, resulting from phosphate mining has actually been removed or disposed. Now, after all that time, countless studies, meetings, agreements, court rulings, and so forth, government claims to be proposing an "early action." If the gravity, seriousness, and the extent of the contamination were not in question, this early action could be construed as a hoax.

Government said that it intervened in the CERCLA process to ensure that the selenium contamination would be dealt with thoroughly and expeditiously.

GOVERNMENT-INDUSTRY MOTIVE QUESTIONED

Protection of the public trust is also necessary in the mandated process required by law to implement major actions by the Federal government or on Federally administered lands. Without public trust in both the industry and regulatory managers responsible, the ability to permit continued and future mining in Southeastern Idaho would become increasingly difficult and more costly to both the government and industry.

Continued success of the phosphate mining industry is dependent on the ability of the agencies and the industry to cooperate within a regulatory framework that provides for maintenance of the public trust...Without this cooperation within a proven regulatory framework our own laws increase the possibility that opponents of land disturbing activities can successfully delay or prevent extractive industries from operating on public lands.

*A tremendous amount of work remains in the effort to continue current phosphate production in southeast Idaho and permit necessary expansions while conducting site investigations and remedial activities at existing mine sites. Agency/Industry relations may continue to be strained at times, but as long as their communications and cooperation continue, an important industry can continue to operate in Southeast Idaho.*⁹

⁸ Jeffrey L. Jones, Caribou-Targhee National Forest, Soda Springs and Brian W. Buck, JBR Environmental Consultants, Inc., *Interagency-Industry Coordination to Respond to Selenium Contamination in Southeastern Idaho*, circa 2004-2005, <http://www.fs.fed.us/geology/buck-jones.pdf>.

⁹ Jeffrey L. Jones, Caribou-Targhee National Forest, Soda Springs and Brian W. Buck, JBR Environmental Consultants, Inc., *Interagency-Industry Coordination to Respond to Selenium Contamination in Southeastern Idaho*, circa 2004-2005, <http://www.fs.fed.us/geology/buck-jones.pdf>.

GOVERNMENT/INDUSTRY SUCCESSFUL IN EXPANDING OPERATIONS DEFLECTING PUBLIC OPPOSITION

In the interim billions of dollars have been made by the companies mining phosphate on public lands, and yet, there is no evidence in the record to show that even one shovel full of the toxic waste has actually been removed or effectively remediated. More importantly, the levels of selenium contamination and discharges emanating from the 15 mine sites, has and will continue to contribute to the impairment of the waters of the United States, in violation and contravention of the provisions of the Clean Water Act. Neither the government nor the mining industry has yet to provide a viable solution to this government-industry-induced selenium disaster. To identify the Conda/Woodall Mine Pedro Creek ODA "Cleanup Plan" as an "early action", after all of these years of studies, delays, mine expansions, and bureaucratic rhetoric is not only disappointing, it is egregious and an affront to the public and private landowners that are the true victims of this yet-to-be resolve government-industry orchestrated cabal.

Summary of the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) 42 U.S.C. §9601 et seq. (1980)
The Comprehensive Environmental Response, Compensation, and Liability Act -- otherwise known as CERCLA or Superfund -- provides a Federal "Superfund" to clean up uncontrolled or abandoned hazardous-waste sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment. Through CERCLA, EPA was given power to seek out those parties responsible for any release and assure their cooperation in the cleanup.

CLOSING COMMENT V: As stated, the selenium-laden water quality contamination surfaced in 1996-1997, when livestock were killed because of selenium poisoning; although a myriad of studies have been conducted, and millions of dollars have been expended, very little effective remediation, if any at all, has been realized or undertaken. In the interim, government continues to sanction phosphate mining expansion, on both public and private property, without providing assurances that the "responsible parties" will mitigate and/or alleviate the water quality contamination to be compliant with the provisions of the Clean Water Act, which, some officials claim, will take hundreds of years to clean up. The Government/industry efforts, to date, have actually undermined the confidence of those participants who are cognizant of the subject matter.

In any and all future "actions", notices or invitations for public comment and/or involvement, please notify Planetary Solutionaries as early as possible, and it would be a good idea to give the public ample time to review and comment on the subject. Lastly, accessing information at the websites provided in EPA and DEQ "Fact Sheet" is extremely difficult and unnecessarily challenging. It might be helpful if the information was more readily available and user friendly. Thank you.

Note: Please forgive any of the redundancies inclusive in this comment letter; however, on certain occasions it is beneficial to repeat the message especially in those cases were many years go by, people get buried in mounds of paper, and/or because the reader(s) may be "overburden" with other issues or agenda items or simply loses focus. The focus here is that the government has a duty to protect the public trust resources and the rights of the private landowner and an obligation to enforce the law, and "***We the People***", respectfully suggest that the government do so accordingly.