



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Post Office Box 1306

Albuquerque, New Mexico 87103

In Reply Refer To:

FWS/R2/ES-HC/EC/042773

OCT 26 2009

Richard C. Adkerson, Chief Executive Officer
Freeport-McMoRan Copper & Gold Inc.
One North Central Avenue
Phoenix, Arizona 85004

Dear Mr. Adkerson:

Please be advised that the Natural Resources Trustees listed below have conducted a Preassessment Screen (PAS) for releases of hazardous substances at the National Zinc Superfund Site in accordance with Title 43 § 11.23 through 11.25 of the Code of Federal Regulations. A copy of the PAS is enclosed for your reference. Based on the PAS, the Trustees have concluded that there is a reasonable probability of making a successful claim for damages with respect to natural resources for which the United States or an Indian Tribe may assert trusteeship. Accordingly, it is the intention of the Trustees to proceed with a Natural Resource Damage Assessment in accordance with § 9607 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* (CERCLA); § 1321 of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.*; the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300; the Natural Resource Damage Assessment Regulations, 43 C.F.R. Part 11; Executive Order 12580 as amended; and other applicable tribal and Federal laws, regulations and directives. A similar Notice of Intent letter is being provided to each of the Potentially Responsible Parties (PRPs) identified by the United States Environmental Protection Agency or the State of Oklahoma, Department of Environmental Quality at this site to date.

The PAS was prepared at the direction and on behalf of the Cherokee Nation, the Osage Nation, and the Secretary of the Interior (hereinafter "Trustees"). These entities act in their respective capacities on behalf of either the public or an Indian Nation as a Trustee for natural resources that are injured or potentially injured by releases of hazardous substances, including but not limited to cadmium, lead and zinc, from the National Zinc Site to the extent authorized by CERCLA. 42 U.S.C. § 9607(f) and 40 C.F.R. Subpart G. These Trustees have formed a Trustee Council pursuant to 43 C.F.R. § 11.32 to cooperate and coordinate the assessment of injured natural resources that may be coexisting, contiguous or under concurrent jurisdiction. The U.S. Fish and Wildlife Service, acting on behalf of the Secretary of the Interior, has been designated by agreement of the Trustees to act as Lead Administrative Trustee for the Trustee Council. Other governmental entities may also be natural resource Trustees but are not participating on the Trustee Council or in the PAS.

The National Zinc Site consists primarily of an undefined area in Osage and Washington Counties, Oklahoma, including the current delineated National Zinc Superfund Site boundaries and any other area where hazardous substances from that site's smelting or other activities have been deposited, stored, disposed of, placed, or otherwise come to be located. Releases of hazardous substances, including but not limited to, cadmium, lead and zinc, into the environment from smelting activities and associated wastes (e.g. fugitive dust) began in late 1907 and will continue until the National Zinc Site is fully remediated. The resources that were identified in the PAS as potentially impacted by releases of hazardous substances from smelting activities include, but are not limited to, terrestrial areas; surface waters, sediments and biota in Eliza Creek drainage system, including the West and North tributaries and the main channel of the creek both upstream and downstream from the confluence with the North tributary. Additionally, surface water and sediment in Sand Creek and Caney River may be potentially impacted from hazardous substances released from the National Zinc Site.

The above listed Indian Nations, which are located within areas that are impacted or potentially impacted by the release of hazardous substances, act as Trustees for natural resources, including their supporting ecosystems, that belong to, are managed by, are controlled by, or appertain to the respective Indian Nation, or which are held in trust for the benefit of such Indian Nation or belong to a member of such Indian Nation if such resource is subject to a trust restriction on alienation. 42 U.S.C. § 9607(f) and 40 C.F.R. § 300.610. The Secretary of Interior acts as a natural resource Trustee for natural resources at the National Zinc Site which are managed or controlled by the U.S. Department of the Interior. 42 U.S.C. § 9607(f) and 40 C.F.R. §300.600.

Based upon the PAS, the Trustees have determined that further investigation and assessment of injuries to natural resources is warranted. The PAS will be used to direct the investigation and assessments, but will not preclude consideration of other resources later found to be affected or other parties found to be responsible for releases of hazardous substances. As the first step in the formal assessment process, the Trustees intend to proceed with the development and completion of an Assessment Plan which will direct efforts to further evaluate the nature and extent of injuries at the National Zinc Site.

In accordance with 43 C.F.R. §11.32, the Trustees hereby invite the participation of the PRPs in the development of the type and scope of the assessment, as well as in the performance of the assessment. To facilitate such participation, the Trustees would like to offer the PRPs an opportunity to enter into an agreement with the Trustees to conduct a cooperative assessment. Such an approach provides a number of benefits to the PRPs, the Trustees and the public including, reduced assessments costs, increased efficiency and a focus on restoration.

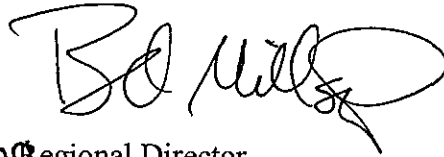
We encourage you to communicate with other PRPs regarding their interest in participating in the assessment process and conducting a cooperative assessment for the National Zinc Site. The Trustees intend to schedule a meeting with all of the interested PRPs to discuss their interest in

Richard C. Adkerson, Chief Executive Officer

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conducting a cooperative assessment within the next 60 days. Please submit a written response to this notice within 30 days of your receipt to address the proposed meeting and your participation.

Sincerely,

A handwritten signature in black ink, appearing to read "B. D. Mills", with a stylized flourish at the end.

Acting Regional Director
U.S. Fish and Wildlife Service
Lead Administrative Trustee, National Zinc
Trustee Council

Enclosure

Richard C. Adkerson, Chief Executive Officer

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cc: Karen Cathey, NRDA Coordinator, Ecological Services, Region 2, Albuquerque, NM
Supervisor, Ecological Services Field Office, Tulsa, OK