



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Washington, D.C. 20240

<http://www.blm.gov>

OCT 02 2009

In Reply Refer To:
1703 (WO-280)

Mr. Mathy Stanislaus
Assistant Administrator
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Red Devil Mine Site, Alaska

Dear Mr. Stanislaus:

I appreciate the ongoing dialogue that our agencies have had regarding the contours of appropriate agency coordination to address the completion of the remedial investigation and remedial action at the Red Devil Mine in Alaska (Site). The Bureau of Land Management (BLM) looks forward to continuing that productive dialogue with you and your staff. We remain committed to working together with you, in cooperation with the State of Alaska, to address those needs in a coordinated effort at this mixed-ownership mine Site.

As you will recall, in my letter to you of September 8, 2009, BLM proposed that the vehicle for ensuring this coordination should be a memorandum of understanding (MOU) based on the "Statement of Principles for Collaborative Decision Making" (OSWER Directive 9200.06-1 (2007)) that has been adopted by the Environmental Protection Agency (EPA), along with the Interior and Agriculture Departments. Consistent with that proposal, I am enclosing a draft MOU prepared by the BLM for your review and consideration. If adopted by the agencies, this MOU would establish an effective framework for the EPA and the BLM, in coordination with the State of Alaska, to collaborate in the completion of remediation at this Site.

I will instruct my staff, in coordination with the Office of the Solicitor, to contact your office to arrange a mutually convenient date and time to meet in the near future to continue these discussions.

Sincerely,

Robert V. Abbey
Director

Enclosure

cc: David Hayes, Deputy Secretary
Wilma Lewis, Assistant Secretary for Land and Mineral Management
Willie Taylor, Director, Office of Environmental Policy and Compliance
Pam Haze, Deputy Assistant Secretary, Policy, Management and Budget
Thomas Lonnie, Alaska State Director, BLM
Michelle Pirzadeh, Acting Regional Administrator, EPA Region 10
Larry Hartig, Commissioner, Alaska Department of Environmental Conservation

MEMORANDUM OF UNDERSTANDING

Between
the Bureau of Land Management and the
U.S. Environmental Protection Agency,
for Conduct of Response Actions
at the Red Devil Mine, Alaska

I. Purpose

A. The purpose of this Memorandum of Understanding (MOU) is to provide a framework for the Bureau of Land Management (BLM), and the U.S. Environmental Protection Agency, (EPA), to work together in the conduct of response actions at the Red Devil Mine in Alaska (Site). Such response actions will be conducted pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, and in accordance with the provisions of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300, and applicable EPA and BLM guidance.

B. The Parties acknowledge their shared interest in and responsibility for protecting public health and the environment with regard to actual or potential risks posed by the release or threatened release of hazardous substances at or from the Site.

C. The Parties also acknowledge, as reflected recently in the Parties' "Statement of Principles for Collaborative Decision Making at Mixed Ownership Sites" (OSWER Directive 9200.06-1), that the Site can be addressed more effectively and efficiently if they collaborate and coordinate their respective responsibilities in the conduct of response activities.

Implementation of this MOU will be primarily accomplished through the coordinated efforts of the BLM Alaska State Office and EPA Region 10.

II. Authorities

A. Pursuant to Executive Order 12580, as amended by Executive Order 13016, the President has delegated his authorities to conduct response actions under CERCLA to several departments and agencies, including EPA and the Department of the Interior.

B. Pursuant to Executive Order 12580, §§ 2(e)(1) and 4(b)(1), the President has delegated to the Department of the Interior (DOI), with certain limitations, CERCLA response authority where a release of a hazardous substance is on, or the sole source of the release is from, land under the DOI's jurisdiction, custody, or control. The Secretary of the Interior has re-delegated certain of his authorities delegated by Executive Order 12580 to the BLM Director with respect to property under BLM's jurisdiction, custody or control.

C. Pursuant to CERCLA sections 105 and 120, EPA is authorized, where circumstances warrant, to list sites on land owned by the United States on the National Priorities List (NPL), following the evaluation of such facilities as prescribed by section 105. EPA may, however, decide not to list or may defer listing of an otherwise eligible site and instead participate as an oversight entity in response actions conducted by another Federal agency.

III. Background

A. The Site is an abandoned cinnabar mine located on land subject to BLM jurisdiction, custody, or control on the banks of the Kuskokwim River in Alaska. A map of the Site is attached and incorporated into this MOU as Attachment A. The Site operated from approximately 1931 until its closure in 1971. During the 1950s, the Site was a leading producer of mercury. This Site was operated by private mining interests under the Mining Law of 1872 (Mining Law) and prior to enactment of the Federal Land Policy and Management Act of 1976

(FLPMA). Pursuant to the Mining Law, mining claimants have broad rights to enter and locate mining claims on public lands, control surface use and activities, and exclude other parties. Until the passage of FLPMA, Federal land managers had no practical regulatory authority over surface uses, including mining. The property on which the Site is located is a priority selection for conveyance, pursuant to the Alaska Native Claims Settlement Act, to the Kuskokwim Corporation (surface estate) and the Calista Corporation (subsurface estate).

B. Beginning in 1979, the BLM determined that a release or threat of a release of hazardous substances had occurred at the Site and initiated an investigation to evaluate such releases.

C. On February 12, 1988, EPA added the Site to the Federal Agency Hazardous Waste Compliance Docket. (53 Fed. Reg. 4280).

D. Beginning in 1989 and continuing to date, the BLM has undertaken response actions, pursuant to and as defined by CERCLA, to address risks and potential risks to public health and the environment presented by Site conditions. Among other actions, the BLM has completed several removal actions to address soil containing elevated levels of mercury. The BLM also has designed and installed several on-Site repositories for remediation wastes and has conducted, and continues to conduct, groundwater monitoring. To date, the BLM has spent over \$4 million at the Site to address risks to human health and the environment.

E. The Parties agree that additional response actions are needed to further investigate the release or threat of release of hazardous substances at or from the Site. The BLM is currently planning to conduct a remedial investigation/feasibility study (RI/FS) at the Site with field work to occur during 2010-2011 to characterize the nature and extent of Site contamination and

evaluate remedial alternatives to address Site risks. Following completion of the RI/FS, the Parties agree that remedial action will be selected, designed, and implemented.

F. The Parties have agreed that BLM will exercise its delegated CERCLA authorities, pursuant to Executive Order 12580, to conduct such response actions.

G. The EPA has determined that the Site is eligible for listing on the NPL pursuant to CERCLA section 105. The EPA also has determined, however, contingent on the BLM fulfilling its responsibilities under this MOU, that it will not list the Site on the NPL and will instead participate in and oversee BLM's response actions as prescribed by this MOU. The BLM acknowledges and supports EPA's involvement and assistance in working with the BLM, as joint stewards, to protect public health and the environment at the Site.

IV. Work to be Performed

A. The BLM will conduct, pursuant to the attached schedule which is incorporated into this MOU as Attachment B, an RI/FS to characterize fully the nature and extent of Site contamination and evaluate Site remedial alternatives. Following completion of the RI/FS, the BLM will conduct, pursuant to a schedule to be negotiated by the Parties, remedial action selected for the Site. The schedule shall be updated periodically by the BLM, in consultation with the EPA, to reflect progress at the Site and current projections.

B. During the conduct of all response actions pursuant to this MOU, the BLM shall exercise lead agency responsibilities, as defined by the NCP, to plan and implement such actions. The EPA shall participate as the oversight agency and shall collaborate with the BLM to ensure that Site response actions are completed in a timely manner. The BLM's response activities, together with the EPA's oversight activities, shall be conducted in accordance with the

applicable provisions of the NCP. As described more fully in Section V of this MOU, the Parties shall work together to complete the RI/FS in accordance with the attached schedule and the applicable provisions of the NCP including, without limitation, 40 C.F.R. § 300.430.

C. This MOU is neither a fiscal nor funds obligation document. The Parties recognize that each must operate within the requirements of the Federal budget process and legal restrictions concerning obligations of funds. No provision of this MOU shall be construed to require the Parties to obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341. Nevertheless, the BLM agrees to work with the EPA in good faith to identify potential gaps between cleanup needs and funding availability and to seek funding necessary to meet the schedules negotiated by the Parties. The BLM agrees, in addition, to prepare an annual budget projecting anticipated costs for work to be performed in the upcoming year pursuant to this MOU and provide such budget to the EPA for its review.

D. The BLM shall provide to the EPA access to the Site at reasonable times and upon reasonable notice for purposes consistent with the provisions of this MOU. The EPA shall have the right to inspect records, logs, contracts and other documents relevant to implementation of this Agreement and also to conduct tests, with prior notice to the BLM, to assess Site conditions or to verify data or other information.

V. Coordination and Cooperation

A. The BLM and the EPA have designated the following persons to be responsible for day-to-day coordination and decisions regarding response action conducted at the Site. The BLM and the EPA will notify the other agency as soon as possible regarding any change in these personnel.

The BLM Remedial Project Manager (RPM) is Larry Beck, Anchorage Field Office (907-267-1226, email Larry_Beck@ak.blm.gov).

The EPA Project Coordinator (PC) is [INSERT CONTACT INFORMATION].

B. The BLM RPM and the EPA PC shall coordinate with each other during BLM's planning and implementation of response actions at the Site. This coordination will include reasonable prior notice of, and an opportunity to participate in, any scheduled meetings relating to response activities at the Site with contractors, the State of Alaska, other federal, State, and Tribal Natural Resource Trustees, or other parties.

C. The BLM and the EPA shall provide to each other all documents relating to response action at the Site. Such documents shall include, but are not limited to, project proposals, work plans, sampling and analysis plans, and quality assurance project plans. The BLM RPM and the EPA PC shall also provide each other copies of documents needed to fulfill the purpose of this MOU. The BLM RPM and the EPA PC shall mutually determine which documents relating to the Site are to be copied and provided to the other agency, either directly by the agencies or by third parties.

D. During the planning and implementation of response actions at the Site, the BLM and the EPA shall reach mutual agreement on the following significant documents ("Deliverables"):

- (1) Project Management Work Plan;
- (2) Community Involvement Plan;
- (3) RI/FS Workplan;
- (4) Quality Assurance Project Plan, Field Sampling Plan, and Health and Safety Plan;
- (5) Baseline Risk Assessment, including human health and ecological risk assessments;
- (6) RI/FS Report;
- (7) Record of Decision (ROD) Schedule;
- (8) Proposed Plan;
- (9) ROD;
- (10) Remedial Design (RD) Schedule;
- (11) RD Work Plan;
- (12) Final RD;

- (13) Remedial Action (RA) Schedule;
- (14) RA Work Plan or Scope of Work
- (15) Certificates of Completion for Response Actions;
- (16) Operation and Maintenance (O&M) Plan; and
- (17) O&M Closeout Report.

E. For purposes of coordination on the deliverables set forth above, the BLM will provide the EPA with a draft of each deliverable for review and comment. The EPA will provide comments within 20 working days of its receipt of the deliverable. If the EPA requires additional time, the EPA PC and the BLM RPM will discuss the need for a reasonable amount of additional time. If the BLM RPM and the EPA PC cannot agree on additional time for review, the issue may be elevated for dispute resolution.

F. Upon receipt of the EPA's comments on a draft deliverable, the BLM will review the comments and incorporate or otherwise address each comment. The BLM RPM and the EPA PC shall confer, in person, by phone, or by email, as often as necessary to address and resolve each comment or, if unable to reach resolution, identify issues for dispute resolution.

G. The Parties acknowledge the interest of the State of Alaska in conditions at the Site. The Parties agree that they will provide opportunities for substantial and meaningful involvement by the Alaska Department of Environmental Conservation in the activities undertaken pursuant to this MOU, in accordance with CERCLA section 121(f) and Subpart F of the NCP ("State Involvement in Hazardous Substance Response").

H. Legal issues will be coordinated between EPA's Office of Regional Counsel and DOI's Office of the Solicitor.

VI. Dispute Resolution

A. The Parties shall make all reasonable efforts to resolve disputes informally at the project level. The Parties acknowledge that consultation between the BLM RPM and the EPA PC should resolve most, if not all, technical issues between the two agencies.

B. If the BLM RPM and the EPA PC do not resolve a dispute arising from response action at the Site, either the RPM or the PC may elevate the dispute for resolution.

C. To initiate dispute resolution, the disputing Party shall give to the other a written notice of the dispute. The notice shall include a detailed explanation of the issue(s) in dispute and the disputing Party's proposed resolution of the dispute. Upon the other Party's receipt of such notice, that Party shall have 15 working days to provide to the disputing Party a written answer. After such 15-day period has expired, the officials designated by the Parties to resolve the dispute ("Deciding Officials") shall make their best efforts to resolve the dispute within 15 working days. For purposes of this paragraph, the Deciding Official for BLM shall be Ted Murphy, Alaska Deputy State Director, and for the EPA Region 10 shall be [INSERT].

D. If the Deciding Officials do not resolve the dispute within 15 days, the dispute will be elevated to the BLM Alaska State Director and the EPA Regional Administrator for resolution. Within 20 working days of their receipt of the dispute, they shall confer and resolve the dispute. In the event they are unable to resolve the dispute, the dispute may be elevated to the BLM Director and the EPA Deputy Administrator.

VII. Miscellaneous

A. The BLM and the EPA reserve their rights and authorities under CERCLA, as well as other laws, the NCP, and applicable Executive Orders. No provision of this MOU in any way limits those rights and authorities.

B. This MOU is not intended to, and does not, create any right, benefit, or trust obligation, substantive or procedural, enforceable at law or in equity by any party against the Parties, the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

C. This MOU may be executed in counterparts by each of the signatories. Each of the counterpart documents shall be deemed an original, but together shall constitute one and the same instrument.

D. This MOU is effective upon the date signed by the last Party.

E. This MOU shall remain in effect for both Parties, subject to modification by mutual agreement made in writing and signed by both Parties, until the O&M Closeout Report is completed.

Environmental Protection Agency

By: _____

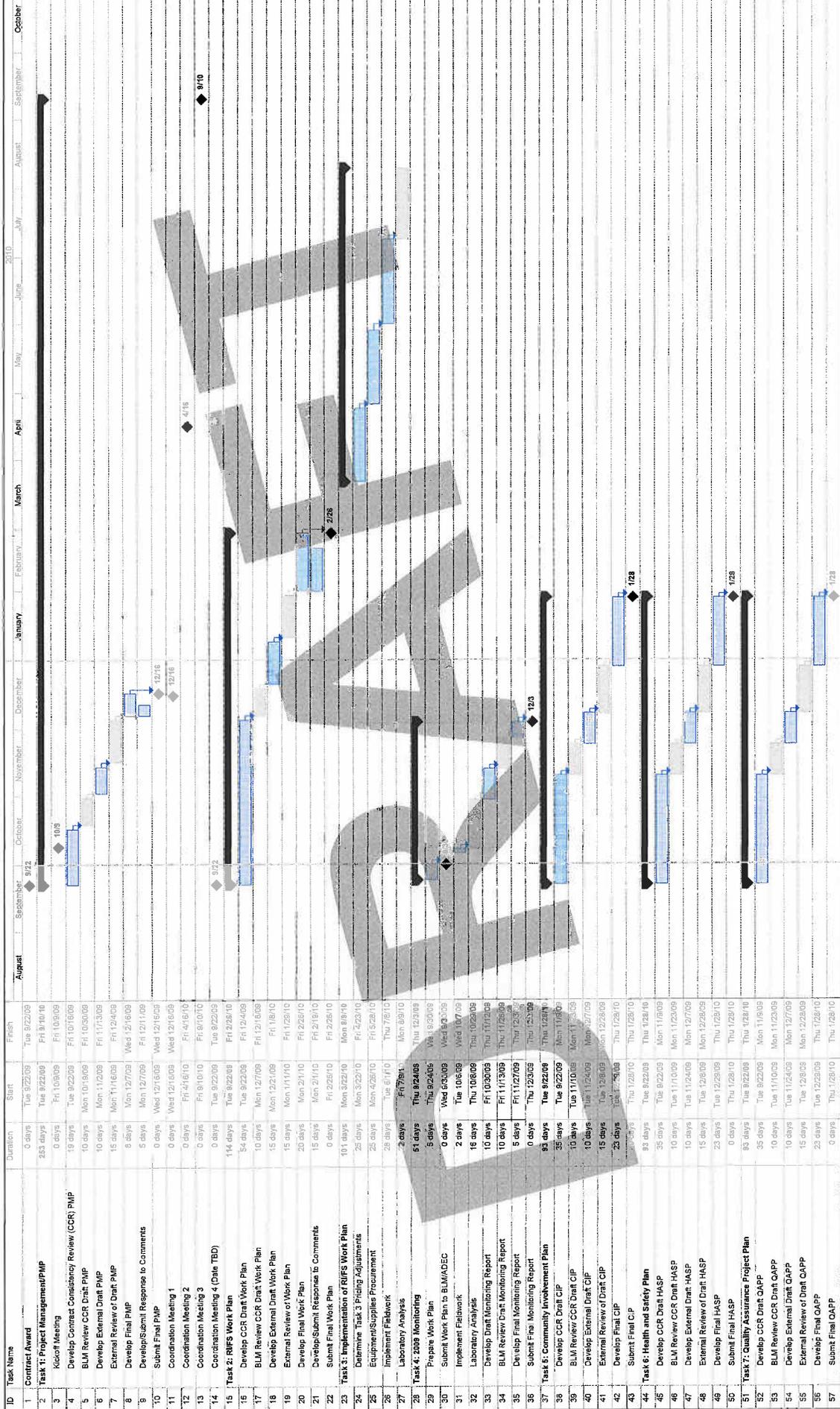
Date: _____

Bureau of Land Management

By: _____

Date: _____

DRAFT
Red Devil Mine RI/FS
Baseline Schedule



ID	Task Name	Duration	Start	Finish
1	Contract Award	0 days	Tue 9/22/09	Tue 9/22/09
2	Task 1: Project Management/PMP	283 days	Tue 9/22/09	Fri 3/10/10
3	Kickoff Meeting	0 days	Fri 10/9/09	Fri 10/9/09
4	Develop Contract Consistency Review (CCR) PMP	19 days	Tue 9/22/09	Fri 10/16/09
5	BLM Review CCR Draft PMP	10 days	Mon 10/19/09	Fri 10/30/09
6	Develop External Draft PMP	15 days	Mon 11/2/09	Fri 11/13/09
7	External Review of Draft PMP	8 days	Mon 11/16/09	Fri 11/27/09
8	Develop Final PMP	5 days	Mon 12/7/09	Wed 12/16/09
9	Develop/Submit Response to Comments	0 days	Wed 12/16/09	Wed 12/16/09
10	Submit Final PMP	0 days	Wed 12/16/09	Wed 12/16/09
11	Coordination Meeting 1	0 days	Fri 4/16/10	Fri 4/16/10
12	Coordination Meeting 2	0 days	Fri 9/10/10	Fri 9/10/10
13	Coordination Meeting 3	0 days	Tue 9/22/09	Tue 9/22/09
14	Coordination Meeting 4 (Date TBD)	114 days	Tue 9/22/09	Fri 2/26/10
15	Task 2: RI/FS Work Plan	54 days	Tue 9/22/09	Fri 12/4/09
16	Develop CCR Draft Work Plan	10 days	Mon 12/7/09	Fri 12/18/09
17	BLM Review CCR Draft Work Plan	15 days	Mon 12/21/09	Fri 1/1/10
18	Develop External Draft Work Plan	20 days	Mon 2/1/10	Fri 2/26/10
19	External Review of Work Plan	0 days	Fri 2/26/10	Fri 2/26/10
20	Develop Final Work Plan	101 days	Mon 3/22/10	Mon 6/8/10
21	Develop/Submit Response to Comments	25 days	Mon 3/22/10	Fri 4/23/10
22	Submit Final Work Plan	28 days	Mon 4/23/10	Thu 5/13/10
23	Task 3: Implementation of RI/FS Work Plan	2 days	Fri 7/9/10	Mon 8/9/10
24	Determine Task 3 Pricing Adjustments	51 days	Thu 8/24/09	Thu 10/29/09
25	Equipment/Supplies Procurement	5 days	Thu 9/24/09	Mon 9/28/09
26	Implement Fieldwork	0 days	Wed 9/30/09	Wed 9/30/09
27	Laboratory Analysis	2 days	Wed 10/7/09	Thu 10/29/09
28	Task 4: 2009 Monitoring	16 days	Thu 10/8/09	Thu 10/29/09
29	Prepare Work Plan	10 days	Fri 10/30/09	Thu 11/19/09
30	Submit Work Plan to BLM/ADCC	5 days	Fri 11/3/09	Thu 11/26/09
31	Implement Fieldwork	0 days	Fri 11/27/09	Thu 12/3/09
32	Laboratory Analysis	83 days	Thu 12/3/09	Thu 2/24/10
33	Develop Draft Monitoring Report	35 days	Tue 9/22/09	Mon 11/9/09
34	Submit Final Monitoring Report	10 days	Tue 11/24/09	Mon 12/28/09
35	BLM Review Draft Monitoring Report	15 days	Mon 12/28/09	Thu 1/28/10
36	Develop Final Monitoring Report	23 days	Thu 1/28/10	Thu 2/11/10
37	Task 5: Community Involvement Plan	35 days	Thu 2/11/10	Mon 3/15/10
38	Develop CCR Draft CIP	10 days	Tue 11/24/09	Mon 12/28/09
39	BLM Review CCR Draft CIP	15 days	Mon 12/28/09	Thu 1/28/10
40	Develop External Draft CIP	23 days	Thu 1/28/10	Thu 2/11/10
41	External Review of Draft CIP	35 days	Thu 2/11/10	Mon 3/15/10
42	Submit Final CIP	82 days	Thu 2/11/10	Thu 4/29/10
43	Task 6: Health and Safety Plan	35 days	Tue 9/22/09	Mon 11/9/09
44	Develop CCR Draft HASP	10 days	Tue 11/10/09	Mon 11/23/09
45	BLM Review CCR Draft HASP	10 days	Tue 11/24/09	Mon 12/28/09
46	Develop External Draft HASP	15 days	Tue 12/8/09	Mon 12/28/09
47	External Review of Draft HASP	23 days	Tue 12/22/09	Thu 1/28/10
48	Develop Final HASP	83 days	Thu 1/28/10	Thu 4/29/10
49	Submit Final HASP	10 days	Thu 4/29/10	Thu 5/13/10
50	Task 7: Quality Assurance Project Plan	35 days	Tue 9/22/09	Mon 11/9/09
51	Develop CCR Draft QAPP	10 days	Tue 11/24/09	Mon 12/28/09
52	BLM Review CCR Draft QAPP	15 days	Tue 12/8/09	Mon 12/28/09
53	Develop External Draft QAPP	23 days	Thu 1/28/10	Thu 2/11/10
54	External Review of Draft QAPP	35 days	Thu 2/11/10	Mon 3/15/10
55	Develop Final QAPP	10 days	Tue 12/22/09	Mon 1/12/10
56	Submit Final QAPP	0 days	Thu 1/28/10	Thu 1/28/10