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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
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Seattle, Washington 98101

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ENVIRONMENTAL APPEALS BOARD

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Document: Status Report

From: R. David Allnutt
Office of Regional Counsel
(206) 553-2581 (phone)

Date and Time: October 27, 2004 at 12:30pm

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ENV. APPEALS BOARD

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

| | | |
|------------------------------|---|------------------------|
| In the Matter of: |) | |
| |) | |
| |) | Appeal No. NPDES 03-10 |
| HECLA MINING COMPANY, |) | |
| LUCKY FRIDAY MINE |) | |
| NPDES Permit No. ID-000017-5 |) | |
| |) | |
| |) | |
| |) | |

REGION 10's STATUS REPORT

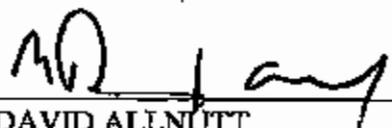
In an October 13, 2004 order, the Environmental Appeals Board directed Region 10 of the U.S. Environmental Protection Agency ("Region") to "file a status report identifying when it anticipates issuing its decision on the variance request and identifying and explaining any circumstances that may cause significant delay." The Region respectfully submits the following Status Report in accordance with this order.

As described in the Region's Response Brief in this matter, Petitioner Hecla Mining Company ("Hecla") has filed a cross complaint in federal district court for the Western District of Washington claiming, *inter alia*, that EPA has unreasonably delayed and failed to act in issuing a final decision on Hecla's 2001 request for a variance, in violation of the Administrative

Procedure Act. Attached hereto is a copy of joint status report that the United States filed electronically today – October 27, 2004 – in conjunction with this ongoing federal district court litigation. See Attachment A. This attached status report provides the Region's most current views on the status of Hecla's variance request. The Region is in the process of reviewing and responding to comments on its proposed decision to deny Hecla's request and is not currently aware of any circumstances that would cause significant delay in making its final decision.

Dated this 27TH day of October, 2004.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that the foregoing "Region 10's Status Report" was sent to the following persons, in the manner specified, on the date below:

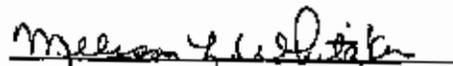
Original and five copies, delivered via facsimile and first class U.S. mail, to:

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board 1103B
Ariel Rios Building
1200 Pennsylvania Avenue, NW
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One copy, by facsimile and first class U.S. mail, to:

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Dated: 10.27.04


Melissa Whitaker
U.S. EPA

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IDAHO CONSERVATION LEAGUE
and THE LANDS COUNCIL,

Plaintiffs,

v.

JOHN IANI, *et al.*,

Defendants.

No. C02-2295Z

SECOND JOINT STATUS REPORT

On January 15, 2004, Cross Claimant Hecla Mining Company ("Hecla") and Defendants United States Environmental Protection Agency, John Iani, Regional Administrator of the United States Environmental Protection Agency, Region 10, and Michael O. Leavitt, Administrator of the United States Environmental Protection Agency, (collectively, "EPA") jointly moved to stay all proceedings in this litigation. By Order of January 17, 2004, the Court granted the joint motion and stayed until further order of the Court all proceedings in this case, and ordered the Parties to "file a joint report regarding the status of the administrative process with the Court on July 16, 2004, and [to] . . . thereafter keep the Court apprised of the status of the case by making periodic joint status reports to the Court." Order

Environmental Defense Section
United States Department of Justice
P.O. Box 23986
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1 Granting Joint Motion to Stay Proceedings at 1 (Jan. 17, 2004). The Parties filed the First Joint Status
2 Report on July 16, 2004, and therein advised the Court that they would file a second joint report on the
3 status of the administrative process on October 29, 2004.

4 Accordingly, the Parties hereby make this Second Joint Status Report. On August 16, 2004, EPA
5 issued its proposed decision on Hecla's request for variance from applicable water quality standards for
6 certain metals. EPA made the proposed decision available for public comment, and the public comment
7 period closed September 30, 2004. In light of the extent of public comment, including comments by
8 Hecla, a reasonable period of time after the close of the public comment period is necessary in order for
9 EPA to review and respond to comments, as appropriate, and to formulate the Agency's final decision.
10 Once EPA issues a final decision, the Parties will be able to clarify whether there are any issues that
11 remain to be litigated. The Parties will file a third joint report on the status of the administrative process
12 on February 15, 2005.
13
14

15 Respectfully submitted,

16 FOR DEFENDANT:

17 THOMAS L. SANSONETTI
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Environment and Natural Resources Division
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United States Attorney
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21 /s/ D. Judith Keith

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FOR CROSS CLAIMANT:

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of October, 2004, a true and correct copy of the foregoing was served by first-class mail on the following:

Kevin J. Beaton
Stoel Rives LLP
101 South Capitol Blvd., Suite 1900
Boise, ID 83702

/s/ D. Judith Keith