

# SGC

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August 6, 2019

Mr. Douglas C. Naftz  
Senior Assistant Regional Counsel  
United States Environmental Protection Agency Region 8  
1595 Wynkoop Street  
Denver, CO 80202

Re: Access to Mayflower Tailings Impoundment No. 4 to Evaluate Suitability as Repository

Dear Mr. Naftz:

More than four years after EPA caused the Gold King Blowout and with EPA having run its water treatment plant at a fraction of capacity for more than three years, I am in receipt of your recent letter requesting access to the Mayflower area for a remedial investigation related to repository evaluation. As you note in your letter, “[a]n on-site repository is required for long-term storage of sludge generated by the Gladstone Interim Water Treatment Plant . . .” Mayflower Impoundment No. 4 is the best and proven site for such a repository. Impoundment No. 4 has accepted water treatment plant precipitate in the past and stored it appropriately, with that use reviewed and approved by the State of Colorado, EPA, and BLM. In keeping with its decades long record of cooperation with government and community to successfully improve water quality, SGC has executed the attached Consent for Access, which grants EPA access to Mayflower Impoundment No. 4 for purposes of a repository evaluation and incorporates reasonable changes to the draft that you provided.

SGC was formed and acquired the Sunnyside Mine in 1985 and mined it from 1986 until 1991 using modern techniques and under the modern era of environmental regulation. SGC’s responsible mining and successful reclamation and remediation has improved water quality in the Animas River. SGC’s activities at Mayflower reflect its cooperative record in the Silverton area. For example, SGC: 1) fully reclaimed the historically-important Mayflower Mill and impoundments, even though SGC only utilized the upper portion of Impoundment No. 4;<sup>i</sup> 2) donated the intact Mayflower Mill to the San Juan County Historical Society, along with \$120,000 and other valuable property; 3) entered into a mutually beneficial land exchange with the County and BLM; and 4) has repeatedly offered Tailings Impoundment No. 4 to EPA for use as a repository.<sup>ii</sup> Despite having no factual, equitable or legal liability, SGC has also engaged in extensive investigatory work at Mayflower. This investigatory work over four years includes dozens of drill holes, comprehensive water sampling and \$8 million spent.<sup>iii</sup> This extensive work is close to reaching a point of diminishing returns and has found no connections or pathways between the Mayflower impoundment area and the Animas River.<sup>iv</sup>



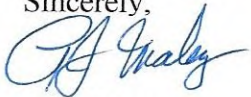
EPA has historically cooperated with initiatives to improve Animas River water quality. For example, EPA: 1) reviewed and endorsed the Consent Decree between Colorado and SGC that resulted in measurable water quality improvements; 2) agreed with the community in 2012 that a Superfund Listing was not appropriate; and 3) has been an active member of the Animas River Stakeholders Group, whose 2014 Timeline for Reducing Metal Loading in the Upper Animas River Basin set June 2017 as the target for implementation of the preferred solution to further improve Animas River water quality.

Unfortunately, since EPA caused the Gold King Blowout, EPA's actions have been driven by a conflict of interest that has been the subject of multiple complaints to the EPA Office of Inspector General, rather than a spirit of cooperation and a desire to further improve water quality. As recently noted:

*Since the Gold King Spill, however, EPA has acted in an adversarial manner. EPA has not operated cooperatively or in good faith. EPA has instead attempted to diffuse its liability and evade its responsibility. EPA's actions seem designed to damage SGC's reputation, create confusion, and exhaust SGC's assets. . . EPA has allowed its personnel to make false statements about SGC. EPA has embarked upon a protracted and unnecessary science experiment to further study aspects of the so-called Bonita Peak Mining District (BPMD), despite no utility in the undertaking, and EPA has attempted to conscript SGC and its resources, experience, and good will into this pointless exercise. EPA plans to implement a smattering of temporary, short term measures having no demonstrable impact on water quality, despite there being a clear solution to improving Animas River water quality that could be implemented now—operating EPA's Gladstone Water Treatment Plant at capacity. . . . EPA has failed to operate its Gladstone Water Treatment Plant at capacity for years, bypassing from treatment over 500 million gallons of metals impacted water from the federally operated Red & Bonita Mine and federally owned American Tunnel portal. . . . Rather than address, efficiently and effectively, the fundamental issue of long-term water quality in the Animas River, EPA's actions have delayed or preempted effective action.<sup>v</sup>*

EPA's course of conduct since the Gold King Blowout provides SGC good reason to cease cooperating with EPA in any manner. Nonetheless, SGC continues to act in good faith, as demonstrated by its granting EPA access to Mayflower Impoundment No. 4 for purposes of a repository evaluation.<sup>vi</sup>

Sincerely,



Pat Maley

Director, Environment

Cc: Kevin Roach  
Chris Stoneback



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<sup>i</sup> The upper portion of Impoundment No. 4 has been shown to be well clear of the water table and above any connection with the Animas River. See the Investigation Summaries referenced in note iii.

<sup>ii</sup> See, e.g., Letter from Larry Perino to Rebecca Thomas, EPA (June 24, 2016).

<sup>iii</sup> SGC has installed 48 monitoring wells (42 alluvial wells and 6 bedrock wells) that are completed in the groundwater systems underlying the Mayflower Impoundments, and an additional 19 boreholes installed by SGC provide further insight regarding subsurface conditions in the Mayflower area. Data generated from these wells has all been supplied to EPA. See, e.g., Formation Environmental, LLC, *Draft 2018 Investigation Summary and Data Interpretation Report Mayflower Impoundments Area* (March 2019); Formation Environmental, LLC, *2017 Investigation Summary and Data Interpretation Report Mayflower Tailings Impoundments Area* (July 2018); Formation Environmental, LLC, *2016 Investigation Summary and Data Interpretation Report, Mayflower Mill and Tailings Impoundments Area* (Feb. 2017).

<sup>iv</sup> There is no reasonable basis to believe that there may be a release or threat of release of a hazardous substance from the Mayflower Impoundments. EPA desires access to the area not to address any release from the Mayflower, but to determine suitability for a repository for water treatment precipitate generated as a result of the EPA caused Gold King Blowout at the Gold King Mine, a non-adjacent property far removed from the Mayflower. There is no impending or actual environmental danger at the Mayflower, nor are any steps necessary to protect the public health, welfare, or environment at the Mayflower.

<sup>v</sup> Westesen Letter to Naftz (July 30, 2019) (footnotes omitted).

<sup>vi</sup> By granting this access to sample, SGC does not waive any claims it might have against EPA nor consent to use of Impoundment No. 4 as a long-term sludge repository absent a subsequent agreement and/or payment of just compensation. In light of its decades of knowledge relating to the Mayflower area, SGC would be willing to meet with EPA to provide EPA with the facts necessary to understand that any potentially contemplated actions in the Mayflower area that go beyond those authorized by the Consent are unnecessary, a waste of taxpayer monies and arbitrary and capricious. To the extent that EPA contemplates any potential actions in the Mayflower area that go beyond those authorized by the Consent, EPA has not adequately described the extent or nature of the work contemplated nor has it provide SGC with an opportunity to carefully analyze the proposed work. The Mayflower area has been studied exhaustively, and there is no rational reason to explore the suitability of any area other than Impoundment No. 4. The scope of work required to determine the suitability of Impoundment No. 4 is limited, and activities beyond those authorized in the Consent are unwarranted. It will be important that EPA's contemplated work not jeopardize the functioning or integrity of SGC's Mayflower monitoring regime. Any work performed at the Mayflower, moreover, must be consistent with SGC's permitting obligations.