

MEMORANDUM

TO: SDSTA BOARD OF DIRECTORS
FROM: TIM ENGEL, LEGAL COUNSEL
RE: ADDITIONAL INSURANCE LIMITS
DATE: JULY 18, 2018

As the Board will recall, during a prior special meeting, the Board authorized the purchase (and financing of the premium) of a new \$75 million “tower” of commercial insurance to insure against LBNF/DUNE-related exposures as required by the Property Donation Agreement (“PDA”). The Captive continues to insure all other exposures.

The PDA requires that the “Homestake Indemnified Parties” be named additional insureds on commercial general liability insurance with limits of no less than \$75 million. In addition, most if not all contracts SDSTA enters into with funding agencies, project sponsors and the grantors of easements require SDSTA to name the other party to the contract as an “additional insured.” It is not possible to include the non-Homestake additional insureds in the \$75 million limits because doing so “dilutes” the \$75 million of limits which we are contractually obligated to provide for Homestake.

Pre-LBNF/DUNE, we addressed this “dilution” issue by purchasing an additional \$20 million “tower” of insurance through the Captive that provides additional insured coverage as required by our contracts with Fermi Research Alliance and others. This separate \$20 million tower was priced and purchased before LBNF/DUNE was imminent and it doesn’t take those risks into account. Accordingly, the Captive has excluded LBNF/DUNE-related exposures from that \$20 million “tower,” meaning we need to find another means of providing additional insured coverage for LBNF/DUNE-related exposures.

The proposed solution is to add another \$25 million of limits on top of the \$75 million of commercial coverage you previously approved. The additional limits will allow us to name others as additional insureds without diluting the \$75 million which is required to be made available for Homestake.

The additional \$25 million will also help protect SDSTA in the event of a loss and indemnification claim related to the Open Cut and related rock conveyor easements.

The premium for the \$25,000,000.00 of additional limits is \$180,000.00 for the coverage period 08/01/2018 to 08/01/2023. That calculates out to \$1,440/\$1,000,000 of coverage per year. We have inquired about the cost of financing the premium over five years and will provide that additional information prior to the board meeting.

If any of you have questions prior to the board meeting, please contact me individually at 605-224-8803 or tme@mayadam.net.