

Earthworks • Information Network for Responsible Mining
San Juan Citizens Alliance • Sheep Mountain Alliance

Jan. 19, 2018

The Colorado Mined Land Reclamation Board
Colorado Division of Reclamation, Mining & Safety
1313 Sherman Street
Denver, Colorado 80203
Via email to: Russ.Means@state.co.us, Camille.Mojar@state.co.us,
Jeff.Fugate@coag.gov

Re: Objection to Request for Extensions of Temporary Cessation Status, Cotter Mines

Dear Members of the Colorado Mined Land Reclamation Board,

The Information Network for Responsible Mining, Earthworks, San Juan Citizens Alliance and Sheep Mountain Alliance submit this combined objection to comprehensively address nine requests to extend temporary cessation status from the Cotter Corporation (Cotter). These organizations object to Cotter's requests for temporary cessation for the following permits:

- SR-13A Mine, Permit No. M-1977-311
- SR-11 Mine, Permit No. M-1977-451
- Mineral Joe Claims, Permit No. M-1977-284
- C-LP-21 Mine, Permit No. M-1977-305
- JD-9 Mine, Permit No. M-1977-306
- CM-25 Mine, Permit No. M-1977-307
- JD-6 Mine, Permit No. M-1977-310

- SM-18 Mine, Permit No. M-1978-116
- JD-7 Pit, Permit No. M-1979-094-HR

With the exception of the Mineral Joe Claims, these operations are situated on public lands leased to Cotter Corporation through the U.S. Department of Energy (DOE) Uranium Leasing Program. For the purposes of clarity and simplicity, the multiple issues that collectively concern these mines and reasons to deny the permit-specific requests for temporary cessation are discussed together in this document.

The staff and members of the objecting organizations are directly and adversely affected parties as defined by Rules 1.1(38.1) and 1.13.6 and take a direct interest in the operations and final reclamation of these mine sites. The staff and members of these organizations regularly use and enjoy the public lands at and surrounding Cotter Corporation's mines, including at Slick Rock, Bull Canyon, Monogram and Davis mesas, Long Park and Uravan, all within the Dolores-San Miguel watershed. We appreciate the opportunity to provide these comments and objections and request to participate as a party to the hearing requested by Cotter before the Mined Land Reclamation Board. As the party requesting the hearing, Cotter bears the full burden of proof to demonstrate that it is entitled to temporary cessation for each of the permits.¹

For consideration by the Board, we have the following comments and objections:

1. Reclamation of mined lands must be achieved in order to provide beneficial public use and meet Colorado's legal mandate.

The purpose of the Colorado Mined Land Reclamation Act (MLRA) is "to encourage the orderly development of the state's natural resources, while requiring those persons involved in mining operations to reclaim land affected by such operations so that the

¹ Colo. State Bd. of Pharmacy v. Priem, 272 P.3d 1136, 1140 (Colo. App. 2012)

² C.R.S. § 34-32-102(2)

³ C.R.S. § 34-32-103(6) (a)(III) (emphasis added)

⁴ Id.

⁵ C.R.S. § 34-32-103 (6)(a) (I) (II) and (III)

affected land may be put to a use beneficial to the people of this state.”² Implicit in this statutory mandate is the expectation that a final cleanup of mined lands will occur once mining is done, and is a guarantee made to the public that comes coupled with the issuance of a permit. Without final reclamation of mined lands, the intent of the law is not fully satisfied.

The law also sets out a clear deadline for when final reclamation of mined lands must occur. Unequivocally, the law states: “In no case shall temporary cessation *of production* be continued for more than ten years without terminating the operation and fully complying with the reclamation requirements of this article.”³ The law also provides clear direction on how a permit may remain in effect by defining the “life of the mine,” at the end of which final reclamation must have been achieved. In order for a permit to remain in effect, a mine must “engage in the extraction of minerals,” it must show that mineral reserves continue to exist, and it must resume production of ore within five years of having ceased production.⁴ The ability to delay final reclamation through temporary cessation is limited to five years after the end of production, and may only be extended for an additional five years with approval from the Board. In no case, the law strongly emphasizes, can a state of non-productivity extend more than a decade.⁵ The ten-year deadline is also explicitly reiterated in the Board’s Rules and Regulations.⁶

The MLRA also clearly determines that mining is considered done once the production of ore ceases, thereby providing certainty to the enshrined requirement that the actual production of ore is necessary in order to maintain a permit. The administrative designation of “temporary cessation” is simply that – an administrative designation.

None of the nine mines operated by Cotter Corporation that are included in the notices of temporary cessation at issue currently have operated in a significant manner, by producing ore for the market, since the 1980s, when the industry experienced an

² C.R.S. § 34- 32-102(2)

³ C.R.S. § 34-32-103(6) (a)(III) (emphasis added)

⁴ Id.

⁵ C.R.S. § 34-32-103 (6)(a) (I) (II) and (III)

⁶ 2 CCR 407-1, Rule 1.13.9

expansive and lasting downturn. Only in the case of a few of the mines – the JD-6 and Mineral Joe, the JD-9, and the SM-18 – did token mining activities occur in previous decades, which did not meet the legal threshold required by the MLRA and the Rules, regardless. Without actually producing ore, Cotter Corporation was obligated to fully reclaim each of these mines within ten years of their initial shutdowns in the early 1980s. “Mining activities” or maintenance work do not meet the MLRA’s requirement that ore be produced.

Despite the lack of production of ore at these mines, Cotter Corporation has unlawfully benefitted from the Board’s failure to consistently enforce, for nearly four decades, the MLRA’s requirement for final reclamation.

2. The clock ran out on these mines long ago.

The Cotter Corporation has benefitted from the historical misapplication of “intermittent” status to uranium mines to delay final reclamation. While the current Division leadership and staff have taken laudable steps in the last several years to reform this practice, the fact is that the clock has already run down on these mines, and been reset before, only to run down again. It is time for the Board to follow the Division’s lead to stop resetting the clock and start fully implementing the law.

The uranium mines located in western Montrose and San Miguel counties experienced a significant downturn in activity following the collapse of the nuclear power industry in the wake of the accident at Three Mile Island in 1979. In the early 1980s, uranium mines in both counties shut down and ceased operating. In accordance with the requirements of the MLRA, the Division of Minerals & Geology approved temporary cessation status for these mines.⁷

In the 1990s, the original ten-year absolute limit on temporary cessation, which allowed the delay of final cleanups, had run out. In response, Cotter converted the permits to

⁷ See DMG’s position in the notice of temporary cessation for the Mineral Joe Claims, for example, on Dec. 20 1993, located in the permit file at <http://bit.ly/2Dpl66y>.

intermittent status through a misinterpretation of the statute that allowed Cotter to keep their permits based on the production of ore **and/or** engaging in supporting, but non-producing “mining activities.”⁸ This policy unlawfully overlooked the MLRA’s requirement that intermittent mines engage in the production of ore on an annual basis in order to maintain their status, and to resume operating every year.⁹

In 2012, the Division of Reclamation, Mining and Safety began to receive the environmental protection plans that were required of all uranium mines in Colorado as a result of the passage of HB 08-1161, and began to once again review the status of the Cotter mines and the lengthy period of time of non-production where final cleanup of the sites had been delayed. On Nov. 9, 2012, the Division informed Cotter Corporation that it must justify the intermittent operating status: ‘In order to maintain IS active mining activities must occur **each** year,’ the Division wrote [their emphasis]. ‘The Act provides that intermittent operations must “resume operating within one year.” C.R.S. § 34-32-103(8); Rule 1.1(31). “Active mining **does not** include general site maintenance, or off-site smelting, refining, cleaning, preparation, transportation, and other operations not conducted on affected land.”’¹⁰

The Division rightly concluded that Cotter’s mines did not meet the requirements of intermittent status, and instead Cotter sought another term of temporary cessation. In 2013, INFORM objected to the new temporary cessation requests for the mines and requested that the mines be fully reclaimed and that the land be returned to beneficial public use, as required by the MLRA. Despite these objections and legal arguments, and the fact that the majority of these mine permits had already enjoyed a full ten years of temporary cessation plus a decade or more of illegitimate intermittent status, the Board ordered that eight of Cotter’s long-dormant uranium mines be placed on temporary

⁸ See, for example, DMG’s Nov. 9, 2012, letter to Cotter informing them of what would be necessary in order to maintain intermittent status, located in permit file at <http://bit.ly/2FWO4Jq>. See also Jan. 12, 2012, letter from DRMS defining the activities that support intermittent status, as opposed to production, located in permit file at <http://bit.ly/2mSQ7FJ>.

⁹ C.R.S. § 34-35-103(6)(a)(II) and (8)

¹⁰ As discussed in Note 8.

cessation on May 7, 2013.¹¹ The Mineral Joe Claims, the CM-25 and the SM-18 were left out of these proceedings and were retroactively placed into temporary cessation in a separate process in September 2017.¹²

Just because the Board and the Division did not attempt to fully enforce the law prior to 2012, there is no excuse not to fully enforce the law now. In fact, enforcement is made even more imperative as a result of this longstanding oversight. It is important to note that Division is attempting now to fully enforce the law and achieve final reclamation at these mines.

On June 29, 2017, the Division sent letters to Cotter addressing temporary cessation status. For the three Cotter mines that are already reclaimed – the SR-13A, the CM-25 and the LP-21 mines – the Division instructed Cotter to initiate the final inspections and release of the permits. The remainder of the mines, which are not fully reclaimed, were directed to either resume mining, to begin final reclamation work, or to apply for a second five-year period of temporary cessation, in accordance with the MLRA and the Rules.¹³ Throughout the past five years, the Division has discussed with mining industry representatives in multiple meetings that it would not support continued delays of final reclamation and second renewal periods of temporary cessation.¹⁴

3. Indicators for and against temporary cessation are in place at the Cotter mines and there are small variations on the broader theme of long-term inactivity at each site.

There are eight Cotter-operated mines that are currently requesting second periods of temporary cessation that share the general history outlined above. Each mine, however,

¹¹ MLRB May 7, 2013, Findings of Fact, Conclusions of Law and Order, in permit file at <http://bit.ly/2DkJCCP>.

¹² Aug. 21, 2017 notice of agenda, in permit file at <http://bit.ly/2FW5zd6>.

¹³ For the LP-21, CM-25 and SR-13A Mines, see June 29, 2017, letter from DRMS online at <http://bit.ly/2DxZ4Pr>.

For the JD-6, JD-9, JD-7 mines see June 29, 2017, letter from DRMS online at <http://bit.ly/2DQfyQj>.

For the Mineral Joe see letter at <http://bit.ly/2mXr4SO>.

For the SM-18 see <http://bit.ly/2DqqaIP>.

¹⁴ July 26, 2017 Board Hearing transcript at pp. 8-12.

has site-specific conditions that indicate that they should be denied the right to delay final reclamation any further. Under Rule 1.13.1(2) the Board considers whether to extend temporary cessation by determining site-specific factors.

Three of these mines – the LP-21, the SM-18 and the SR-13A – are already fully reclaimed according to Division records and Board orders. Final reclamation is an indication against temporary cessation under Rule 1.13.3(1).¹⁵ The Rule states that a mine is ineligible for temporary cessation status if ‘extraction has been completed and only final reclamation and related activities occurring at the site are part of the “life of the mine”.’ Because the LP-21, the SM-18 and the SR-13A mines are already reclaimed, all the activities required by the permit have been completed, thus concluding the life of the mine and indicating that only final release of the bond and permits are ahead. This interpretation of the MLRA’s legal requirements is the correct one and was put forth by the Division in its June 29, 2017, letters to Cotter Corporation.

All nine of the Cotter mines have indicators of temporary cessation under the Rules.

Rule 1.13.5(2)(3) states that temporary cessation is indicated when “there are personnel other than security people at the site, but they are engaged in activities which can be described as maintenance of housekeeping, or related activity.” Cotter does not have any employees working full-time at these inactive mines, only an off-site employee who visits the mines periodically.

Rule 1.13.5(2)(6) states that temporary cessation has already occurred when “there is only minimal or token excavation of mineral or other material.” At the Mineral Joe and JD-6 mines, the SM-18 and the JD-9, Cotter has only reported token production of ore during a few years in previous decades. Cotter only reported minimal production of ore at the JD-9 Mine between 2003 and 2006. And Cotter reported only token production at the SM-18 Mine in 2005 and 2006. Notably, all of this activity occurred longer ago than the ten-year statutory limit on non-production.

¹⁵ See also MLRA at C.R.S. § 34-32-103(6)(b)

Rule 1.13.5(2)(7) states that temporary cessation has already occurred when “mine development has ceased and mining has not recommenced.” This is the case with all eight of the Cotter mines, as indicated in the annual reports to the Division that do not report activities other than routine maintenance and notably do not report activities that resulted in the production of ore.

4. Cotter has not met the requirements necessary to be granted second, five-year periods of temporary cessation.

Under Rule 1.13.5(3)(b), the notice for the second period of temporary cessation must provide an explanation of why mining has not recommenced, or explain why final reclamation has not begun. In its notices and requests for a hearing, Cotter provided as reasons for its failure to resume mining the current economic conditions of the uranium market and a federal court injunction against the DOE Uranium Leasing Program. The injunction was ordered by a federal judge on Oct. 18, 2011, and amended on Feb. 27, 2012, regarding a case filed against the Uranium Leasing Program by objectors INFORM and Sheep Mountain Alliance as well as three other conservation organizations.¹⁶ The injunction suspended active mining and other activities on the DOE lease tracts, but allowed opportunities for Cotter Corporation to receive judicial permission to conduct activities at the mines by consent of the parties. Cotter concedes that the amended injunction “excluded from the injunction’s scope certain maintenance and reclamation activities and other work,” as stated in notices of temporary cessation.¹⁷ Importantly, the amended injunction did nothing to restrict DOE’s processing of site-specific plans of operation and explicitly exempted activities necessary “to comply with orders from federal, state, or local government regulatory agencies.”¹⁸

¹⁶ Colorado Environmental Coalition v. Office of Legacy Management, Case No. 08-CV-1624

¹⁷ See for instance, notice of temporary cessation for the SR-13A Mine, Aug. 31, 2017, in permit file at <http://bit.ly/2BfaH8u>.

¹⁸ See enclosed Amended Injunction at 8.

In any case, despite Cotter's reliance on the injunction to excuse its noncompliance with the MLRA, the injunction and the DOE case have no bearing on the status of Cotter Corporation's permits with the Division. The injunction as well as Cotter's leases with the Department of Energy requires full compliance with all the terms and conditions of its permits with the State of Colorado.¹⁹ The DOE lawsuit does not involve, nor does it affect, the interests of Colorado in any way, and the state is not an interested party in the case. Neither does the DOE case involve matters of jurisdiction under state law.

Cotter's plan to resume mining, as required by the demonstration requirement of Rule 1.13.5(3)(c) relies on the dissolution of the injunction by court order, which is expected to occur in the near future as the case is resolved. Yet, even when the injunction is lifted, Cotter will still not be able to resume the production of ore because of the global market conditions that render ore production at these mines economically non-viable.

In contrast to Cotter's assertion that the injunction poses a barrier to their intentions of mining, the injunction absolutely does not prohibit Cotter Corporation from continuing with its permitting requirements. The filing and approval of paperwork to satisfy permit terms and conditions is not prohibited by the injunction. In fact, Cotter's leases with DOE and DOE decisions subsequent to the injunction require Cotter to initiate site-specific applications to DOE to conduct, at each of its leased mines, an Environmental Assessment under the National Environmental Policy Act (NEPA).²⁰ Cotter has taken no steps to initiate this process. This failure to actively pursue any of the necessary permits

¹⁹ See enclosed sample lease at p. 5 (Article XI).

²⁰ See DOE May 12, 2014 Record of Decision at 79 Fed.Reg. 26959 (enclosed):

As plans for exploration, mine development and operation, or reclamation are submitted by the lessees to DOE for approval, further NEPA analyses for these actions will be prepared and tiered from the Final ULP PEIS. The level of follow-on NEPA analyses will depend on the action being proposed by the lessees. For mining plans to be submitted for approval, DOE will prepare, at a minimum, an environmental assessment with appropriate public involvement to further evaluate potential site impacts.

These NEPA analyses will be prepared to inform DOE's decisions on approval of the plans, including the conditions DOE will require to mitigate potential environmental impacts. DOE will conduct further consultations regarding cultural and endangered species, as appropriate, depending on the specific action.

with DOE demonstrates that Cotter is not seriously engaged in an effort to continue ore production at these sites.

Additionally, in a case in 2014 involving notices of temporary cessation from Gold Eagle Mining, which also involved DOE mines subject to the injunction, the Board determined that the injunction did not relieve the operator from its obligations to proceed with submitting reclamation plans and receiving approvals.²¹

(The Mineral Joe Claims are not part of the DOE leasing program and, thus, Cotter's claim that the injunction prohibits reclamation activities does not apply.)

Rule 1.13.5(3)(c) requires the "demonstration of continued commitment to conduct mining operations at the site by the end of the second five-year period" by the operator in requests for renewal of temporary cessation. In its requests, Cotter fails to meet the demonstration requirement by relying on their routine submissions of required permitting documents and environmental protection plans with the Division, as well as the renewal of its leases with the Department of Energy. Minimum routine activities necessary to keep a permit from falling into an enforcement action does not demonstrate a commitment to resume mining operations by the end of the five-year period. If that was the case, all permits that are in good standing would automatically qualify for the second term of temporary cessation – a result contradicted by the requirement to come before the Board to make an adequate demonstration. The failure of Cotter to apply for, or demonstrate any progress toward, any of the necessary updated mine plan applications with DOE is a much more relevant consideration – and shows that Cotter has not met the "demonstrated commitment" test.

5. Cotter's notices of temporary cessation did not meet the requirements of Rule 1.13.5.

The MLRA and the Mined Land Reclamation Board Rules put the burden on the operator

²¹ MLRB, May 28, 2014, Order, requiring Gold Eagle Mining Inc. to submit reclamation plans to DOE for approval. See permit file at <http://bit.ly/2mSIsaF>.

to obtain temporary cessation status by requiring the operator to promptly report non-production.²² Rule 1.13.5 states, “If the Operator plans to, or does, temporarily cease production of the mining operation for one hundred eighty (180) days or more, the Operator must file a Notice of Temporary Cessation in writing, to the Office.”

The Rules strictly allow for only two five-year temporary cessation periods, and require that the “[i]nitial period shall be the first five years of Temporary Cessation beginning with the 180 day period of production cessation.”²³ Thus, the statute and Rules mandate that the production cessation date begins upon the 180-day period of production cessation that the operator must report in its Notice of Temporary Cessation, not the date that the Temporary Cessation status is confirmed by the Division. The MLRA therefore recognizes that the question of when temporary cessation begins is a matter of fact established by mandatory reporting of non-production. Cotter did not meet the requirements of the Rules or the MLRA in this regard. For the existing temporary cessation status enjoyed by the Cotter mines currently, Cotter did not fulfill its obligation to report the non-production of ore and attempted to continue relying on the intermittent status loophole. In fact, in three cases, the Board had to retroactively apply temporary cessation status going back more than five years for three of the mines, the SM-18, the CM-25 and the Mineral Joe Claims.²⁴

6. Speculative and unfocused market projections do not reflect the economic reality of returning the mines to a productive state in the future.

On Jan. 16, 2017, the nation’s two largest uranium producers, Energy Fuels Inc. and Ur-Energy USA Inc. filed a petition with the U.S. Department of Commerce that painted an extraordinarily bleak but realistic outlook for the uranium industry that called for national action to end a crisis in the marketplace. The petition called for the extraordinary actions of establishing national purchase quotas and other trade measures to protect U.S. uranium producers from the economic threat of foreign imports. The petition lays out a clear case

²² C.R.S. § 34-32-103(6)(a)(II); 2 CCR 407-1, Rule 1.13.5(1)

²³ 2 CCR 407-1, Rule 1.13.5(1)(a)

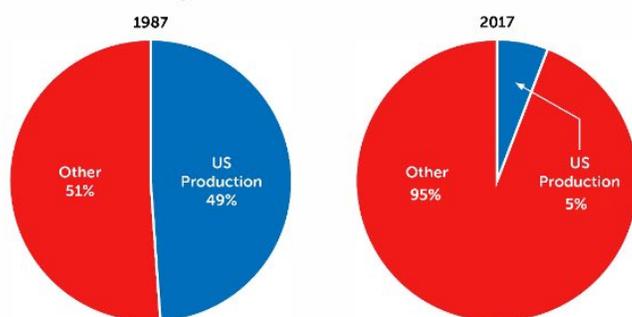
²⁴ See agenda notice to Cotter, Aug. 11, 2017, located in permit file at <http://bit.ly/2rn5uvF>.

of how unlikely it is that uranium mines in the United States will become economically viable within the next five years, and even makes the assertion that disastrous conditions are a near certainty.²⁵

The petition included an infographic that depicts the bleak outlook for the uranium industry and the significant declines domestic producers have experienced since the early 1980s, when Cotter's mines all entered their first periods of temporary cessation.

The uranium industry in crisis: 30 years of decline

Shares of national requirements



Domestic industry participants:

1987: 39



2017: 5 (3 inactive)



Domestic industry employees:

1987: 2,002



2017: <500



This outlook for the uranium industry presents a sharp contrast to Cotter's terse but confident assertions that mining will resume at all of these mines as soon as these final renewals of temporary cessation status have run out in five years. "Cotter plans to resume

²⁵ See discussion at pp. 2-4 in petition, located online at <http://bit.ly/2mOfybA>.

production operations at this mine after the price of uranium returns to a profitable point,” states Cotter’s notice of temporary cessation for the SM-18 Mine, for example.²⁶

“The domestic uranium mining industry has reached a turning point,” Energy Fuels and Ur-Energy concluded in the petition. “Absent immediate relief from imports, the industry could soon cease to exist.”²⁷

Notably, Energy Fuels received authorization from the Board on Nov. 8, 2017, to renew for a second period of five years the temporary cessation status of the Whirlwind Mine, Permit No. M-2007-044, despite never having produced any actual ore at the mine since its initial permitting.²⁸ In its notice of temporary cessation for the Whirlwind, Energy Fuels wrote:0 “The mid- to long-term market for uranium continues to be positive...”²⁹

Permit-specific objections:

The above discussion demonstrates the basis to deny Cotter’s request for temporary cessation for each of the permits. The following objections address each permit individually, but incorporate the discussion above to avoid redundancy.

7. Objection to temporary cessation renewal for SR-13A Mine, Permit No. M-1977-311

Cotter Corporation was issued a permit for the SR-13A Mine on Aug. 31, 1979. Less than a year later, on Aug. 8, 1980, the first period for temporary cessation was approved. That status was renewed on July 23, 1985. Then five years later, when the original 10-year

²⁶ See July 31, 2017 SM-18 notice, in permit file at <http://bit.ly/2BhbG8i>.

²⁷ Ibid, p. 99.

²⁸ MLRB, Nov. 8, 2017, Findings of Fact, Conclusions of Law, and Order, located in permit file at <http://bit.ly/2DlyAx2>.

²⁹ Notice of temporary cessation, Whirlwind Mine, Aug. 31, 2017, in permit file at <http://bit.ly/2mRMU9B>.

limitation on temporary cessation was up, the SR-13A Mine was approved for intermittent status on Aug. 31, 1990.³⁰

The SR-13A is a fully reclaimed mine that has not operated or produced ore since 1980. Following the initial 10 years of temporary cessation in the 1980s, the SR-13A was allowed to delay final reclamation and permit release by being reclassified as an intermittent mine for the next **22 years**. The SR-13A, despite its fully reclaimed status indicating that it was not eligible for temporary cessation, again received this designation beginning on Dec. 15, 2012.³¹

According to the Board's May 7, 2013, order placing the SR-13A into this new period of temporary cessation, Cotter did not report any activities during the history of its permit that indicated the production of ore, only supportive "mining activities." Those reported activities included underground drilling in 1991, 1992 and 1994; ground support work in 1993; surface drilling in 1997 and 2010; and re-pocking of a waste dump in 2010. These activities did not include production.³²

The objectors request that the Board deny Cotter's application for another period of temporary cessation for the SR-13A and order Cotter to initiate a release of the permit pursuant to the MLRA's requirement that final reclamation of a mine must not be delayed for more than 10 years. According to Division records, production ceased at the SR-13A Mine in 1980, more than **37 years ago**.

Cotter's notice of temporary cessation of Aug. 18, 2017³³ does not meet the requirements of Rule 1.13.5(3)(b) to provide an adequate explanation for why operations have not

³⁰ See MLRB May 7, 2013, Findings of Fact, Conclusions of Law and Order, in permit file at <http://bit.ly/2DkJCCP>.

³¹ Id. See also June 29, 2017, letter from DRMS to Cotter notifying them of the mines' change in status. In permit file at <http://bit.ly/2Dnacev>.

³² Id.

³³ Aug. 28, 2017, notice of temporary cessation for the SR-13A Mine, in permit file at <http://bit.ly/2BfaH8u>.

resumed and reclamation has not begun. Cotter incorrectly relies on the unrelated DOE court injunction as an excuse to further delay reclamation and release of the permit. Cotter's notice of temporary cessation does not meet the requirements of Rule 1.13.5(3)(c) by demonstrating a continued commitment to conduct mining operations at the site by the end of the temporary cessation periods. Cotter relies on unsubstantiated and speculative assertions that the uranium market will return to favorable economic conditions.

The objectors support the Division's position as stated in its June 29, 2017, letter to Cotter Corporation notifying them that the SR-13A was not eligible for continued temporary cessation, was fully reclaimed and therefore at the end of the "life of the mine," and must initiate the process to release the permit.³⁴

8. Objection to temporary cessation renewal for SR-11 Mine, Permit No. M-1977-451

Cotter Corporation was issued a permit for the SR-11 Mine (also called the Ike Mine) on Feb. 15, 1979. The mine was approved for its first period of temporary cessation on Dec. 23, 1981. That status was renewed on Nov. 28, 1986. On Oct. 18, 1990, the SR-11 Mine was reclassified as an intermittent operation and was able to delay final reclamation of the mine under this loophole for an additional **22 years**.³⁵

On Dec. 15, 2012, the SR-11 was again granted temporary cessation status by the Board order in May 2013. As noted in the order, Cotter reported only supportive mining activities at the SR-11 during those years. These included surface drilling between 1991 and 1994 and again in 1996 and 2002; construction of a portal and waste dump, and drift development in 2005; construction of berms and stormwater runoff basins; and waste dump pocking and berm work in 2010 and 2011.³⁶ Although Cotter conducted work at

³⁴ See June 29, 2017, letter in permit file at <http://bit.ly/2Dnacev>.

³⁵ See MLRB May 7, 2013, Findings of Fact, Conclusions of Law and Order, in permit file at <http://bit.ly/2DkJCCP>.

³⁶ Id.

the SR-11 to move toward a re-initiation of mining, no actual production of ore occurred, as required by the MLRA.

In a Division review memorandum to the Department of Energy dated May 16, 2007, the Division noted the lack of production at the SR-11. “A letter from Cotter dated 6/21/05 states that the development and production at this mine would commence in July 2005. The development work was the driving of a new decline to access the ore body. The annual report dated January 2006 states that development at this mine ceased in November 2005. The reports do not indicate that or if there was any ore production during this brief period of activity. The other annual reports and inspection reports reviewed indicate that the site has been inactive over the remainder of the period of interest.”³⁷

The objectors request that the Board deny Cotter’s notice for another period of temporary cessation for the SR-11 and order Cotter to initiate final reclamation of the site pursuant to the MLRA’s requirement that final reclamation of a mine must not be delayed for more than 10 years. According to Division records, production ceased at the SR-11 Mine in December 1981, more than **36 years ago**.

Cotter’s notice of temporary cessation of Nov. 22, 2017³⁸ does not meet the requirements of Rule 1.13.5(3)(b) to provide an adequate explanation for why operations have not resumed and reclamation has not begun. Cotter incorrectly relies on the unrelated DOE court injunction as an excuse to further delay reclamation and release of the permit.

Cotter’s notice of temporary cessation does not meet the requirements of Rule 1.13.5(3)(c) by demonstrating a continued commitment to conduct mining operations at the site by the end of the temporary cessation periods. Cotter relies on unsubstantiated and speculative assertions that the uranium market will return to favorable economic conditions.

³⁷ May 16, 2007, Permit File Review Memorandum, enclosed, and located in permit file at <http://bit.ly/2DRk956>.

³⁸ In permit file at <http://bit.ly/2BfZbd4>.

9. Objection to temporary cessation renewal for Mineral Joe Claims, Permit No. M-1977-284

A permit for the Mineral Joe Claims was issued on June 16, 1978, to the Kelmine Corporation. The Kelmine Corporation ceased operations on March 15, 1984³⁹ and submitted a Notice of Temporary Cessation on Aug. 1, 1985.⁴⁰

The Cotter Corporation acquired the Mineral Joe Claims in 1993. On December 20 of that year, Cotter requested that the status of temporary cessation be withdrawn and applied for “intermittent” status. The change was approved on Jan. 31, 1994.⁴¹

In its Dec. 20, 1993, application for intermittent status, Cotter describes “mining activities” that occurred on the Mineral Joe Claims since 1985. Cotter reported token mining production had occurred at the mine in 1987, when 900 tons of ore were mined; in 1988, when 1,107 tons of ore were mined; and in 1989, when 3,043 tons of ore were mined.⁴² The Mineral Joe Claims operate in conjunction and in support of the JD-6 Mine, but are excluded from the U.S. Department of Energy Uranium Leasing Program that includes the other Cotter mines.

After acquiring the Mineral Joe in 1993, Cotter reported that it engaged in “mining activities” but did not produce ore. The reported activities were “mine evaluation, surveying, ground control, timber installation and repair, regular mine inspections, environmental assessment, stormwater assessment, sampling and disposal of transformers, electrical supply upgrade, inspection of escape-way and maintenance work performed on all access roads.”⁴³ Notably, there was no production of ore.

³⁹ March 22 1999 inspection report, in permit file at <http://bit.ly/2mX72ru>.

⁴⁰ Aug. 1, 1985, notice in permit file at <http://bit.ly/2EWTQK0>.

⁴¹ See record at <http://bit.ly/2DiWjOh>.

⁴² See application at <http://bit.ly/2DloSe4>.

⁴³ Id.

In its application for intermittent status in 1993, Cotter justifies the switch to intermittent status based on the token and minimal extraction that occurred in the mid-1980s. However, Cotter failed to continue to produce ore, even at token levels, after 1989.⁴⁴ Since that time, there has been no production at the Mineral Joe Claims at all, a period of inactivity that has lasted **over 28 years**.

In a Division review memorandum to the Department of Energy dated May 16, 2007, the Division noted the lack of production at the SR-11. “A letter from Cotter dated 6/21/05 states that the development and production at this mine would commence in July 2005. The development work was the driving of a new decline to access the ore body. The annual report dated January 2006 states that development at this mine ceased in November 2005. The reports do not indicate that or if there was any ore production during this brief period of activity. The other annual reports and inspection reports reviewed indicate that the site has been inactive over the remainder of the period of interest.”⁴⁵

The Mineral Joe Claims were reclassified from intermittent status and were again placed into temporary cessation effective Dec. 15, 2012.⁴⁶

The objectors request that the Board deny Cotter’s notice for another period of temporary cessation for the Mineral Joe Claims and order Cotter to initiate final reclamation pursuant to the MLRA’s requirement that final reclamation of a mine must not be delayed for more than 10 years following the cessation of production. According to Division records, production ceased at the Mineral Joe Claims no later than 1989.

Cotter’s notice of temporary cessation of Aug. 28, 2017⁴⁷ does not meet the requirements of Rule 1.13.5(3)(b) to provide an adequate explanation for why operations have not

⁴⁴ See Cotter comments dated Jan. 25, 2013, in file at <http://bit.ly/2DqtfuD>.

⁴⁵ May 16, 2007, Permit File Review Memorandum, enclosed, and located in permit file at <http://bit.ly/2DRk956>.

⁴⁶ See notice at <http://bit.ly/2BfB3Hi>.

⁴⁷ In permit file at <http://bit.ly/2DIQEXP>.

resumed and reclamation has not begun. Cotter incorrectly relies on the unrelated DOE court injunction as an excuse to further delay reclamation and release of the permit.

Cotter's notice of temporary cessation does not meet the requirements of Rule 1.13.5(3)(c) by demonstrating a continued commitment to conduct mining operations at the site by the end of the temporary cessation periods. Cotter relies on unsubstantiated and speculative assertions that the uranium market will return to favorable economic conditions.

10. Objection to temporary cessation renewal for C-LP-21 Mine, Permit No. M-1977-305

Cotter Corporation was issued a permit for the C-LP-21 Mine on March 31, 1979. A little over a year later, the first period of temporary cessation was approved on Aug. 8, 1980, and then the second period was approved on July 23, 1985. After the 10-year period of temporary cessation ran out, as required by the MLRA, the LP-21 was reclassified with intermittent status on Aug. 31, 1990.⁴⁸

In its May 2013 order, the Board authorized a third period for temporary cessation for the LP-21 Mine effective Dec. 15, 2012, ending the intermittent status the mine had benefitted from since 1990. According to that order, the mining activities conducted at the LP-21 included ground support work in 1995, 1998, 2000 and 2002; surface drilling in 1996; and additional drilling in 2010. But no production.⁴⁹

According to the Division's most recent inspection report, from Sept. 12, 2017, final reclamation at the site was completed in 2003.⁵⁰

The objectors request that the Board deny Cotter's application for another period of temporary cessation for the C-LP-21 Mine and order Cotter to initiate a release of the

⁴⁸ See MLRB May 7, 2013, Findings of Fact, Conclusions of Law and Order, in permit file at <http://bit.ly/2DkJCCP>.

⁴⁹ Id.

⁵⁰ In permit file at <http://bit.ly/2FT2PNw>.

permit pursuant to the MLRA's requirement that final reclamation of a mine must not be delayed for more than 10 years. According to Division records, production ceased at the LP-21 in 1980, more than **37 years ago**.

Cotter's notice of temporary cessation of Aug. 28, 2017⁵¹ does not meet the requirements of Rule 1.13.5(3)(b) to provide an adequate explanation for why operations have not resumed and reclamation has not begun. Cotter incorrectly relies on the unrelated DOE court injunction as an excuse to further delay reclamation and release of the permit. Cotter's notice of temporary cessation does not meet the requirements of Rule 1.13.5(3)(c) by demonstrating a continued commitment to conduct mining operations at the site by the end of the temporary cessation periods. Cotter relies on unsubstantiated and speculative assertions that the uranium market will return to favorable economic conditions.

The objectors support the Division's position as stated in its June 29, 2017, letter to Cotter Corporation notifying them that the LP-21 was not eligible for continued temporary cessation, was fully reclaimed and therefore at the end of the "life of the mine," and must initiate the process to release the permit.⁵²

11. Objection to temporary cessation renewal for JD-9 Mine, Permit No. M-1977-306

Cotter Corporation received a permit to operate the JD-9 Mine on Sept. 30, 1979. The initial, first period of temporary cessation was approved on Aug. 8, 1980. The second period of temporary cessation was approved on July 23, 1985. At the end of that period in 1990, the JD-9 Mine should have been reclaimed but, instead, it was reclassified with intermittent status, which lasted until 2012.⁵³

⁵¹ In permit file at <http://bit.ly/2mVbKGa>.

⁵² In permit file at <http://bit.ly/2mVSY1s>.

⁵³ See MLRB May 7, 2013, Findings of Fact, Conclusions of Law and Order, in permit file at <http://bit.ly/2DkJCCP>.

The JD-9 was reclassified from intermittent status and entered a third period of temporary cessation effective Dec. 15, 2012. According to the May 2013 Board order in the matter, Cotter reported mining activities at the mine periodically in the 1990s. These included ground control work in 1991-92; surface drilling in 1991 and 1997; repair work on a vent hole in 1991 and 1992; installation of a power drop in 1992; and retimbering of the decline in 1997. However, no actual production of ore occurred, as was required under the MLRA to retain intermittent status during this period. the May 2013 Board order also cites the minimal return of production in 2003, stating “The Operator mined ore from the JD-9 Mine 2003 through 2006.”⁵⁴

At that time, Cotter was obligated by law to report the cessation of operations after production ceased in 2006, and even had a third period of temporary cessation been legitimately warranted, at least **a decade has passed** between the time the last mining occurred at the JD-9 and today.

The objectors request that the Board deny Cotter’s notice for another period of temporary cessation for the JD-9 Mine and order Cotter to initiate final reclamation pursuant to the MLRA’s requirement that final reclamation of a mine must not be delayed for more than 10 years following the cessation of production. According to Division records, production ceased at the JD-9 Mine no later than 2006.

Cotter’s notice of temporary cessation of Nov. 22, 2017⁵⁵ does not meet the requirements of Rule 1.13.5(3)(b) to provide an adequate explanation for why operations have not resumed and reclamation has not begun. Cotter incorrectly relies on the unrelated DOE court injunction as an excuse to further delay reclamation and release of the permit.

Cotter’s notice of temporary cessation does not meet the requirements of Rule 1.13.5(3)(c) by demonstrating a continued commitment to conduct mining operations at the site by the end of the temporary cessation periods. Cotter relies on unsubstantiated

⁵⁴ See board order in permit file at <http://bit.ly/2mT8vyh>.

⁵⁵ In permit file at <http://bit.ly/2Djt2TS>.

and speculative assertions that the uranium market will return to favorable economic conditions.

12. Objection to temporary cessation renewal for CM-25 Mine, Permit No. M-1977-307

According to Division records, the CM-25 entered its first five-year period of temporary cessation on Aug. 8, 1980, then was renewed for a second period on July 25, 1985.⁵⁶ The Division's most recent inspection report for the CM-25, dated Sept. 12, 2017, notes that "final reclamation was completed at this site in February 2003."⁵⁷

In its application for intermittent status, Cotter listed mining activities that had occurred at the CM-25 since 1980, including determining ore reserves, surface and underground drilling, mine mapping, feasibility studies, geological report preparation, ore sampling, timber repair and groundwater control work. Cotter also reported in comments to the Division that ground support work occurred at the CM-25 in 1992, 1993 and 1996-98; surface drilling occurred in 1991-94, 1996, and in 2010.⁵⁸ But no actual mining.

The objectors request that the Board deny Cotter's application for another period of temporary cessation for the CM-25 and order Cotter to initiate a release of the permit pursuant to the MLRA's requirement that final reclamation of a mine indicates that the life of the permit is concluded and the site must be returned to beneficial public use. According to Division records, production ceased at the SR-13A Mine in 1980, **more than 37 years ago, and the mine has been fully reclaimed since 2003.**

Cotter's July 31, 2017, notice of temporary cessation for the CM-25 does not meet the requirements of Rule 1.13.5(3)(b) to provide an adequate explanation for why operations have not resumed and reclamation has not begun.⁵⁹ Cotter incorrectly relies on the

⁵⁶ See Jan. 22, 2013 comments in permit file at <http://bit.ly/2DQ4vqt>.

⁵⁷ Sept. 12, 2017 inspection in file at <http://bit.ly/2mTB0gk>.

⁵⁸ See Jan. 22, 2013 comments in permit file at <http://bit.ly/2DQ4vqt>.

⁵⁹ In permit file at <http://bit.ly/2DOPu8h>.

unrelated DOE court injunction as an excuse to further delay reclamation and release of the permit.

Cotter's notice of temporary cessation does not meet the requirements of Rule 1.13.5(3)(c) by demonstrating a continued commitment to conduct mining operations at the site by the end of the temporary cessation periods. Cotter relies on unsubstantiated and speculative assertions that the uranium market will return to favorable economic conditions.

The objectors support the Division's position as stated in its June 29, 2017, letter to Cotter Corporation notifying them that the CM-25 was not eligible for continued temporary cessation, was fully reclaimed and therefore at the end of the "life of the mine," and must initiate the process to release the permit.⁶⁰

13. Objection to temporary cessation renewal for JD-6 Mine, Permit No. M-1977-310

Cotter received a permit to operate the JD-6 Mine on July 31, 1979. A year later, the mine was placed into temporary cessation, effective July 15, 1980. That status was renewed for a second five-year period starting on July 23, 1985. Then the ten years allowed by statute were up.⁶¹

Rather than reclaim the inactive JD-6 Mine, Cotter applied for, and was granted, intermittent status on June 25, 1990 and was allowed to delay final cleanup. According to the May 2013 Board order authorizing the reclassification, minimal mining activities were reported by Cotter to justify the intermittent status the mine benefitted from during these years. Those activities included the movement of waste material in 1995 and 1996; ground support work in 1995 through 1998; storm water diversion construction in 1996; and replacement of a pump in 1998.⁶²

⁶⁰ In permit file at <http://bit.ly/2mQKNTm>.

⁶¹ See MLRB May 7, 2013, Findings of Fact, Conclusions of Law and Order, in permit file at <http://bit.ly/2DkJCCP>.

⁶² Id.

Apparently, little occurred at the JD-6 until 2004 when the board order noted, “The Operator resumed mineral production in 2004 and 2005.”⁶³ The date of last activity was listed as February 2006 in Cotter’s most recent annual report for the JD-6, filed on July 31, 2017.⁶⁴ In its memo reviewing the status of uranium mines between 2001 and 2007, the Division noted in 2007 that, “Inspection reports from 2005 and 2006 indicated that this mine area was active in 2005, but ceased activity late in the year or early in 2006. There are no production numbers in the annual reports at this mine.”⁶⁵ Although Cotter claims to have produced some ore at the JD-6 in late 2005 through February 2006, this brief output does not represent a return to active mining.

Thus, the JD-6 Mine has not produced ore since 2006 and ore production immediately before the cessation of operations was minimal and token in nature. Cotter summarized those mining activities at JD-6 in comments to the Division in 2012, noting the Division memorandum’s notation of a load-out operation and the presence of 50 tons of ore on the stockpile on April 5, 2012. Cotter also cites the Division’s Oct. 5, 2005, inspection documenting the presence of 75 tons of stockpiled ore.⁶⁶

The JD-6 Mine went dormant in 2006. It has been **idled for more than 10 years**. The law now requires that it be reclaimed. The objectors request that the Board deny Cotter’s notice for another period of temporary cessation for the JD-6 Mine and order Cotter to initiate final reclamation pursuant to the MLRA’s requirement that final reclamation of a mine must not be delayed for more than 10 years following the cessation of production.

Cotter’s notice of temporary cessation of Nov. 22, 2017⁶⁷ does not meet the requirements of Rule 1.13.5(3)(b) to provide an adequate explanation for why operations have not

⁶³ Id.

⁶⁴ Annual report in permit file at <http://bit.ly/2mWeOly>.

⁶⁵ May 16, 2007, Permit File Review Memorandum, enclosed, and located in permit file at <http://bit.ly/2DRk956>.

⁶⁶ See p 6 in Cotter response, in permit file at <http://bit.ly/2Dk12Q2>.

⁶⁷ See Nov. 22, 2017, notice of temporary cessation in permit file at <http://bit.ly/2Bhl0Jk>.

resumed and reclamation has not begun. Cotter incorrectly relies on the unrelated DOE court injunction as an excuse to further delay reclamation and release of the permit.

Cotter's notice of temporary cessation does not meet the requirements of Rule 1.13.5(3)(c) by demonstrating a continued commitment to conduct mining operations at the site by the end of the temporary cessation periods. Cotter relies on unsubstantiated and speculative assertions that the uranium market will return to favorable economic conditions.

14. Objection to temporary cessation renewal for SM-18 Mine, Permit No. M-1978-116

Cotter's permit to operate the SM-18 Mine was issued on Oct. 31, 1979.⁶⁸ The SM-18 entered its first period of temporary cessation on Aug. 8, 1980, and the status was renewed in 1985 for a second period of temporary cessation.⁶⁹ At the end of this period, Cotter applied for intermittent status and avoided the legal mandate to fully reclaim the mine within ten years of the cessation of operations.

In the July 26, 1990, application for intermittent status from Cotter, the mining support activities that occurred at the SM-18 since 1980 are listed, including "determining ore reserves, surface drilling, geologic report preparation, ground control in preparation for mining, resurfacing the portal area for drainage control in preparation for mining, pump and pump line repair in preparation for mining, ore sampling, roadway repair work in the decline in preparation for mining, and mine dewatering in preparation for mining." These reports do not include the extraction of ore.

In reporting on its mining activities during the mine's period of intermittent status after 1990 in correspondence with the Division, Cotter noted the construction of a pond in 1994; surface drilling in 1997, timber repair in the decline in 1999; and the release of five

⁶⁸ See permit in file at <http://bit.ly/2DSzIJB>.

⁶⁹ In permit file at <http://bit.ly/2DveWly>.

reclaimed acres in 2004. Cotter reported that it recommenced ore production at the SM-18 Mine in mid-March 2005 and continued through early 2006.⁷⁰

In its most recent annual report,⁷¹ Cotter reported 2007 as the date of last activity at the mine, which indicates that it has been a decade, at minimum, since the SM-18 operated and produced ore. In its mining plan submitted in 2012 as part of its Environmental Protection Plan approval, Cotter does not provide a more detailed history or details of prior operations at the SM-18.⁷²

In its June 29, 2017, letter to Cotter notifying them of the change to SM-18's status, the Division noted that its "records and inspections indicate a lack of mining operations or other activities which are defined in Rule 1.13.2." The Division determined that a retroactive date of a third period of temporary cessation should be applied effective Dec. 12, 2012.⁷³ In applying for the renewal of that status now, possibly resulting in a fourth period of temporary cessation for the SM-18 is only an attempt by Cotter to avoid the final reclamation requirements for inactive mines. The SM-18 Mine **last produced ore in 2006**, according to Cotter's own reports. The ten-year statutory limit has passed and it is now time to begin final reclamation of the mine.

The objectors request that the Board deny Cotter's notice for another period of temporary cessation for the SM-18 Mine and order Cotter to initiate final reclamation pursuant to the MLRA's requirement that final reclamation of a mine must not be delayed for more than 10 years following the cessation of production.

Cotter's notice of temporary cessation of July 31, 2017⁷⁴ does not meet the requirements of Rule 1.13.5(3)(b) to provide an adequate explanation for why operations have not resumed and reclamation has not begun at the SM-18. Cotter incorrectly relies on the

⁷⁰ See comments in permit file at <http://bit.ly/2mSZ02h>.

⁷¹ Available in the permit file online at <http://bit.ly/2EXGm0C>.

⁷² See Exhibit D EPP amendment application in the permit file online at <http://bit.ly/2DsjB8L>.

⁷³ In permit file at <http://bit.ly/2DqqaIP>.

⁷⁴ In permit file at <http://bit.ly/2DIJinp>.

unrelated DOE court injunction as an excuse to further delay reclamation and release of the permit.

Cotter's notice of temporary cessation does not meet the requirements of Rule 1.13.5(3)(c) by demonstrating a continued commitment to conduct mining operations at the site by the end of the temporary cessation periods. Cotter relies on unsubstantiated and speculative assertions that the uranium market will return to favorable economic conditions.

15. Objection to temporary cessation renewal for JD-7 Pit, Permit No. M-1979-094-HR

Cotter Corporation was issued a permit for the JD-7 Pit on Dec. 14, 1979. On April 2, 1981, the JD-7 Pit was approved for its first period of temporary cessation, and that status was renewed for another five years on June 27, 1986. When the initial ten years of temporary cessation ran out, the Board then approved the JD-7 for intermittent status on Feb. 21, 1991.⁷⁵ Since its permitting, the JD-7 mine site was developed and overburden removed but ore has never been produced, a period of inactivity that has lasted over **37 years**. It is time to finally clean it up.

In its May 2013 order authorizing the delay of final reclamation of the JD-7 open pit mine by allowing yet another period of temporary cessation, the Board noted the mining activities that had occurred at the JD-7 through the years. Those including in-pit drilling from 1991-93 and between 1996 and 2004; stormwater diversion work in 2006; construction of a drill road, and rehabilitation of the storm water pit dam and a ditch in 2011.⁷⁶

No mining, though.

⁷⁵ See p. 6 in MLRB May 7, 2013, Findings of Fact, Conclusions of Law and Order, in permit file at <http://bit.ly/2DkJCCP>.

⁷⁶ Id.

In their latest annual report from Nov. 21, 2017, Cotter stated that the last activity to have occurred at the JD-7 was in 1982.⁷⁷ In 2013 comments to the Division, Cotter noted how “production activities were **paused** in April 1981 as a result of market conditions.”⁷⁸

The objectors request that the Board bring this permanent pause to an end and deny Cotter’s requests to renew temporary cessation status for the JD-7 Pit and order Cotter to initiate final reclamation pursuant to the MLRA’s requirement that final reclamation of a mine must not be delayed for more than 10 years following the cessation of production.

Cotter’s notice of temporary cessation of Nov. 22, 2017⁷⁹ does not meet the requirements of Rule 1.13.5(3)(b) to provide an adequate explanation for why operations ore production has not occurred and reclamation has not begun. Cotter incorrectly relies on the unrelated DOE court injunction as an excuse to further delay reclamation and release of the permit.

Cotter’s notice of temporary cessation does not meet the requirements of Rule 1.13.5(3)(c) by demonstrating a continued commitment to conduct mining operations at the site by the end of the temporary cessation periods. Cotter relies on unsubstantiated and speculative assertions that the uranium market will return to favorable economic conditions.

Conclusion:

Denial of Cotter Corporation’s requests to extend temporary cessation status at the eight mines in this objection is consistent with Colorado law. An order for final reclamation will begin the process of fulfilling Colorado’s legal mandate to return mined lands to a use beneficial to the public. The Board should fully implement the requirements of the

⁷⁷ See report in file at <http://bit.ly/2DxbO8L>.

⁷⁸ See p 3 in comments in permit file at <http://bit.ly/2BfV3Kd>.

⁷⁹ In permit file at <http://bit.ly/2DrV183>.

Mined Land Reclamation Act and proceed with orders to enact final reclamation and closure of these mines.

We appreciate your consideration of these comments.

Respectfully submitted,

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