



La Plata County
Colorado

Planning Department

1060 East 2nd Ave
Durango, CO 81301
(970)382-6259

April 23rd, 2013

Division of Mining Reclamation and Safety
Attn: Anthony Waldron, Minerals Program Supervisor
1313 Sherman St., Room 215
Denver, CO 80203

RE: Wildcat Mining Company; Mayday Idaho Mine Complex; DRMS File # M-1981-195

Dear Mr. Waldron,

Thank you for your letter dated April 10, 2013 regarding the recent approval of several Technical Revisions related to corrective actions for the mine referenced above. We appreciate that you have taken the time to provide us with a written update on the progress of Wildcat Mining Company as it relates to the Mayday Idaho Mine Complex. Staff frequently contacts Dustin Czapla, the Environmental Protection Specialist for DRMS out of the Grand Junction Office, to insure that good communication is maintained between DRMS and La Plata County, and we were previously made aware of the approval of Technical Revisions 1 through 6.

From your letter, it is apparent that DRMS is concerned that the Class II approval from La Plata County is needed for Wildcat to go onsite and re-construct and stabilize the illegal access road. This is not the case. The County recognizes the State has imposed corrective actions, and has identified that a permit from the County is not needed for the condition of the illegal access road to be addressed. In a letter from County Attorney Paul Kosnik to Wildcat's legal counsel, dated July 20, 2012, the County stated that if the current condition of the illegal access road posed an imminent threat to public health, safety, and welfare that Wildcat would be allowed to re-construct and stabilize the illegal access road without the need of a Class II permit. Mr. Fugate and yourself were copied on this letter, which is attached here for your convenience. As a response to Mr. Kosnik's letter, the Attorney General's Office sent responses via two letters dated August 14th, 2012 and September 14th, 2012 stating that, "the current condition of of

the access road did indeed present an imminent concern to the Division with regard to potential impacts on human health, safety and welfare and the environment.”

As indicated by this correspondence, La Plata County has no objection to Wildcat Mining Company entering onto the property and conducting the corrective actions needed to bring the illegal access road into compliance with DRMS. Please note that because your letter specifically requested clarification on the re-construction and stabilization of the illegal access road relative to the County’s permit review process, this response letter only covers activities related to this corrective action. At this time we request that the applicant and DRMS verify if county approvals are needed for other corrective action activities onsite which require site preparation, excavation, construction, development, etc.

Additionally, your April 10, 2013 letter indicates Wildcat Mining Company had satisfied the Mined Land Board Order and recently received final approval for mining operations. Our understanding of the 2011 Mined Land Reclamation Board Order, includes the submittal and approval of all Technical Revisions related to the corrective actions onsite in addition to the requirement that the Division approve as-built certifications submitted subsequent to the completion of the approved plans and verification of compliance with state standards, the Mining Act, and DRMS rules prior to mining approval. The MLRB order is attached for your convenience with the relative sections highlighted. Finally, after reading the Board Order it appears to us that mining and reclamation plans related to the Mayday and Idaho complex would also need to be received and approved by the Division prior to mining approval. As the issue of State approval for mining operations was raised in the April 10, 2013, letter, and such approval does not align with our understanding of MLRB Order, we would like to request clarification of the current State permit status relative to the Board Order.

In summary, (1) a Class II permit is not required for Wildcat Mining to proceed with taking corrective actions related to the re-construction and stabilization of the illegal access road required by the MLRB order, and (2) Clarification regarding whether Wildcat Mining Company has been approved by DRMS to commence mining would be greatly appreciated at this time.

Please feel free to contact me if you have any questions related to the contents of this letter.

Sincerely,



Courtney Roseberry
Natural Resources Planner
La Plata County Planning Department
970.382.6390

Cc: *by electronic mail*
Damian Peduto, Planning Director
Victoria Schmitt, Planning Engineer
Paul Kosnik, Assistant County Attorney III
Penfield Tate, Greenberg Traurig, LLP
Daniel Madruga, Carroll & Lange-Manhard
Dustin Czapla, DRMS

Enclosures: Letter from Mr. Kosnik to Mr. Tate, dated July 20th, 2012
Attorney General Letter to La Plata County, dated August 14th, 2012
Attorney General Letter to La Plata County, dated September 14th, 2012
Mined Land Reclamation Board Order, dated December 12th, 2011



La Plata County Attorney

Sheryl Rogers
Todd Weaver
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July 20, 2012

Via email to tatep@gtlaw.com and neumannc@gtlaw.com

Penfield Tate, Esq.
Chris Neumann, Esq.
Greenberg Traurig, LLP
1200 17th Street
Suite 2400
Denver, CO 80202

Re: May Day Idaho Mining Complex Roads

Dear Penfield and Chris:

This letter is in response to questions you had regarding the processing of Wildcat Mine Corporation's ("Wildcat") variance request for certain road standards applicable to the May Day Idaho Mining Complex (the "Project"). Specifically, your questions are as follows: (1) Whether La Plata County (the "County") claims jurisdiction over the internal or historic roads within the affected area of the mining permit; and (2) If Wildcat obtains a variance, whether it can begin construction on the road prior to obtaining a land use permit. The County does claim jurisdiction over the interior roads of the Project, but would rely on Colorado Division of Reclamation Mining & Safety's ("DRMS") previous review and approval of the roads to support a variance if certain conditions are met. The County's land use code does not permit construction prior to obtaining a land use permit, but would allow such construction if Wildcat provides proof of certain conditions.

County Jurisdiction over the Project's Road

The Colorado Local Land Use Control Enabling Act¹ and the Colorado County Planning Code,² provide broad authority for the County to plan for and regulate the use of land.³ Pursuant to this

¹ C.R.S. §§ 29-20-101, *et seq.*

² C.R.S. §§ 30-28-101, *et seq.*

³ See *Board of County Commissioners of La Plata County v. Bowen/Edwards, Inc.*, 830 P.2d 1045 (Colo. 1992).

authority, La Plata County regulates the land use impacts of mineral extraction operations. The La Plata County Land Use Code (the “LPLUC”) requires that new development improve existing offsite and onsite roads to a level corresponding to projected impacts.⁴ The level of improvement for existing onsite and offsite roads is based on the projected impacts, which corresponds to the number of proposed average daily trips.⁵ Therefore, any new development, including mineral extraction operations, must ensure that existing onsite and offsite roads meet the standards identified in the LPLUC.

The Colorado Mined Land Reclamation Act⁶ (the “MLRA”) does not expressly preempt the County’s land use authority. To the contrary, the MLRA expressly states that mining operators are subject to proper application of local government zoning and land use regulations, which was recognized by the Mined Land Reclamation Board.⁷ Therefore, the County’s proper application of land use regulations is not preempted by the MLRA.

The County recognizes that although its land use authority is not expressly preempted by the MLRA, application of specific provisions could create operational conflict. The application of the County’s road standards does not create operational conflict with the MLRA. The County’s road standards do not impede the State’s interests, but instead are reasonable and are harmonious with the State’s goal of ensuring mining access roads meet a level of service that protects the health, safety and welfare of the citizens of the State. Thus, the County’s road standards for roads internal and external to the Project may be appropriately applied.

Variance Procedure, Standards, and Road Construction

If a project cannot meet the road standards identified in the LPLUC, the development may still be approved if a variance is obtained.⁸ To obtain a variance, an applicant must meet the criteria found in the LPLUC and receive approval from the Board of Adjustment.⁹ After receiving a variance the applicant can seek review and approval through the County process provided for in Chapter 82 of the LPLUC.

Wildcat may seek a variance from the road standards identified in LPLUC § 74-91. The County would support a variance to the road standards approved by DRMS if the County receives written confirmation from the DRMS that it reviewed the road on the west side of the La Plata

⁴ LPLUC § 82-161(c).

⁵ LPLUC § 74-91(c)(6).

⁶ C.R.S. §§ 34-32-101, *et seq.*

⁷ C.R.S. § 34-32-109(6); C.R.S. § 34-32-115(4)(c)(I); and *Colorado Mining Association v. Summit County*, 199 P.3d 718, 729 (Colo. 2009); *see also C&M Sand & Gravel v. Boulder County*, 673 P.2d 1013, 1017 (Colo. App. 1983).

⁸ *See* LPLUC § 74-43.

⁹ *See* LPLUC § 66-21 – 28.

River, as well as the historic road on the east side of the La Plata River that travels through the Project and the standards applied are adequate to protect the health, safety and welfare of the public under the proposed use.

Although the County may support a variance, a variance is not a land use permit, and all development must obtain a permit prior to construction.¹⁰ Development is defined, in part, as any excavation or land disturbance.¹¹ Construction of a road is land disturbance. This development is not excluded in the LPLUC from obtaining a land use permit and must obtain a permit prior to construction. The obtainment of a variance does not permit the construction of a road and the Project may not begin construction until a land use permit is obtained.

The County recognizes that the current condition of the road on the west side of the La Plata River may present imminent concerns that threaten the health, safety and welfare of the public. Mainly, the imminent concerns may be that the road on the west side of the La Plata River could potentially give way and sediment could erode into the river and adjacent wetlands. If this is the case, the County would allow construction of the road to commence on the west side of the La Plata River prior to obtaining a land use permit in order to protect the health, safety and welfare of the public.

To begin construction of the road on the west side of the La Plata River prior to obtaining a land use permit, Wildcat must demonstrate that the current condition of the road is an imminent danger to the health, safety and welfare of the public. This must be demonstrated through a letter from DRMS that states the road on the west side of the La Plata River is an imminent threat to the public's health, safety and welfare and improvements need to occur immediately to protect the public. Furthermore, the County would need assurance that the bond required by DRMS would cover reclamation of the road.

If the County authorizes Wildcat to begin construction on the west side of the La Plata River prior to obtaining a land use permit, Wildcat shall be advised that such authorization is not a permit to use the property for mining activities, is at its own financial risk, and does not guarantee any future land use permit approval. Furthermore, an authorization would not provide a basis for any future claim against the County to recoup costs if the mining operations are not permitted to proceed. The County would also request that specifics regarding the road construction, including, equipment used, level and limits of activity and other information required by DRMS are submitted to help facilitate responses to public inquiries regarding activity.

¹⁰ LPLUC § 82-1.

¹¹ LPLUC § 62-1.

Conclusion

The County will review the existing internal and external roads for the Project and require them to meet the standards identified in the LPLUC. If these standards cannot be met, a variance may be obtained. The County would support a variance to the standards identified by the DRMS if a letter is received from DRMS as outlined herein. Also, construction of a road is not permitted under the LPLUC until a land use permit is obtained. However, the County would permit Wildcat to commence construction prior to obtaining a permit if a letter is received from DRMS as outlined herein.

Thank you for your ongoing cooperation. If you would like to discuss any of these issues further, please do not hesitate to contact me.

Sincerely,

LA PLATA COUNTY ATTORNEY'S OFFICE



Paul Kosnik

Direct e-mail: kosnik@lpcattorney.org

Cc: Jeff Fugate, Esq., DRMS
Tony Waldron, DRMS
Courtney Krueger, La Plata County
Victoria Schmitt, La Plata County
Sheryl Rogers, Esq., La Plata County
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STATE OF COLORADO
DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING
1525 Sherman Street - 7th Floor
Denver, Colorado 80203
Phone (303) 866-4500

August 14, 2012

Mr. Paul Kosnik
La Plata County Attorney's Office
1099 Main Street, Suite 313
Durango, CO 81301

RE: May Day Idaho Mine Complex Roads

Dear Mr. Kosnik:

I have been asked by the Division of Reclamation, Mining, and Safety to provide this letter in response to your letter dated July 20, 2012 regarding (1) the Division's review and approval of standards and safety measures associated with the existing mine roads within the approved May Day Idaho Mine Complex permit area and (2) the Division's interest in immediate repair of the access road at the May Day Idaho Mine Complex.

In regard to the existing mine roads within the permit area, the Division conducted a thorough review of these roads during the conversion application (CN-01) process. Although the roads within the permit area are pre-existing mine roads the Division did require the Operator to submit plans to implement various safety measures to ensure that the intended use of the roads would not impact public health, safety, welfare or the environment. Measures required by the Division included safety berms, storm water management and control, road stabilization, and grading. The plans approved under CN-01 are protective of public safety and the environment.

As we discussed by phone on July 12, 2012, the Division has been actively involved in the regulation of this site, and specifically the "illegal" access road, since November, 2008. As stated during our discussion, the current condition of the access road does present an imminent concern to the Division with regard to potential impacts on human health, safety, welfare, and the environment. The Division has made its position clear through various public hearings, permitting documents, and technical correspondence with the Operator that proper repair and stabilization of the access road is of paramount concern to the Division and is necessary to be protective of public safety and the environment.

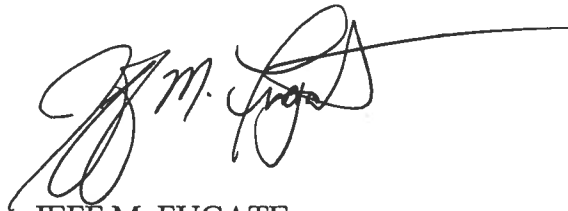
On May 23, 2012 the Division approved Technical Revision 2 which specifically approved a plan for proper repair and stabilization of the access road. The repair plan approved under TR-02 received a thorough technical review by the Division and was found

to include adequate safeguards to be protective of public health, safety, welfare and the environment. However, the Division's concern with regard to public safety and the adjacent wetlands and river will remain until the operator completes the construction and repair work on the road as outlined in the approved plan. In order to properly protect the public and environment the work approved under TR-02 needs to commence this construction season.

Over the past four years this operation has received an incredible amount of regulatory oversight and technical scrutiny—at both the State and County level. Presently, the Division has approved multiple plans to bring the site into compliance with outstanding Board orders and corrective actions while providing necessary safeguards with respect to the protection of public health, safety, welfare, and the environment. Technical details regarding repair of the access road, as approved in TR-02, as well as information regarding the protective measures associated with the existing mine roads located within the permit area, as approved in CN-01, are available to both the county and interested persons upon request. Should any additional information be required please feel free to contact me at the number below. Members of the public can also contact Dustin Czapla, the Division's environmental protection specialist assigned to this permit, at 970-243-6299.

Sincerely,

FOR THE ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "J.M. Fugate", with a long horizontal line extending to the right.

JEFF M. FUGATE
First Assistant Attorney General
Resource Conservation Unit
Natural Resources & Environment Section
303-866-5532
Email: jeff.fugate@state.co.us

cc: Mr. Tony Waldron--DRMS
Mr. Dustin Czapla--DRMS
Mr. Penfield Tate
Mr. Chris Neumann



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DEPARTMENT OF LAW**

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September 14, 2012

RE: Wildcat May Day Idaho Mining Complex Roads

Dear Mr. Kosnik,

I forwarded your e-mail to the DRMS staff that conducted the review of CN-01 and TR-02, they provided the information discussed below. Again, DRMS's technical review always takes protection of public health, safety, and environment into consideration, however, the State review process and applicable standards may differ from those required by the County. I believe the DRMS technical review of the roads was sufficient to provide the necessary assurance to the County that the health, safety, and welfare of the community, as well as the environment, are protected. Additionally, should Wildcat proposes new or amended plans at the May Day Idaho Mine Complex that further specifies use of the roads, DRMS would conduct another thorough, plan specific, technical review to ensure continued protection of health, safety and the environment.

In the e-mail you request "confirmation that DRMS considered sanitary, concrete, and excavation trucks as part of the intended use for the existing roads", and that "if DRMS fully considered the impact of sanitary, concrete and excavation trucks on the existing roads and believes that the approved plans will ensure that the roads are safe for all intended use, then the County Planning Department will support a variance to the standards required by DRMS." Please note that DRMS did not review specific impacts from sanitary, concrete, or excavation trucks. Rather the review was fact/site specific based on the application submitted by the operator and the type of operation proposed. The May Day Idaho Mine Complex is a small underground hard rock operation, therefore the "intended use" of the roads is based on the nature and scale of the proposed operation.

DRMS review related to the access road under TR-02:

Of concern to the Division with regard to the access road (from CR 124 to the La Plata River bridge crossing) was stability. Under the engineering analysis required through TR-02, Wildcat used a 40-ton vehicle load for their stability analysis. The weight of the vehicle was determined based on the maximum load anticipated to use the access road in support of the proposed mining operation. La Plata County's standard weight limit is 8,000 pounds per wheel (approximately 72 tons per vehicle) for vehicles with solid rubber or cushioned wheels. The 40-ton vehicle load is well below the County's maximum weight limit standards.

DRMS considered the access road's capacity to handle a 40-ton vehicle (the review did not include specific vehicle types or purposes such as sanitation, concrete, or excavation). Since the access road design is based on a maximum vehicle load of 40 tons, vehicles with weights greater than 40 tons are not permitted to utilize the access road. Again, the DRMS review of the access road was to ensure that the road is stable and usable for support of a small scale underground mining operation.

DRMS review related to the existing mine roads under CN-01:

The pre-existing roads within the permitted area pre-dated the permit application. Therefore, the pre-existing roads did not receive a rigorous review from DRMS because the plans submitted by Wildcat did not propose activities that would require significant upgrades or improvements be made to these roads. Rather, DRMS reviewed a proposed plan related to a small underground mine and intended uses of the existing roads in support of that specific mining operation. As explained below, the small scale and nature of this operation inherently dictates the size of the equipment that will be necessary to support the operation.

Sanitary facilities/trucks are not typically an issue specifically reviewed by DRMS. Operators are expected to do their own site maintenance/cleaning and hauling of trash offsite. Trucks utilized for sanitation purposes could be approved under a proposed plan so long as they are compliant with the weight limits, turning radius, and grades of the existing and historic mine roads.

Additionally, DRMS did not specifically consider large concrete trucks use of the roads. However, such a review was not warranted based on the proposed plans submitted and reviewed by DRMS. Small underground mines, such as the May Day Idaho Complex, generally mix their concrete on-site with a mobile mixer. This type of concrete mixer is towed behind a pick-up truck. The existing roads will support this type of activity.

By "excavation truck" it is assumed that you are referring to highway haul trucks. Again, this is a small underground operation. Waste rock generated from mining operations has been proposed to be disposed underground or dumped nearby the portal. The application (not yet approved) proposes to mill and concentrate ore materials on-site with on-site disposal of tailings. The primary commodity proposed to be exported from the site is concentrate, which is typically shipped in 55 gallon drums, which can be transported from the mill to the County Road by pick-up truck. The proposed plan did not include movement of large quantities of earthen materials across the surface nor did the plan indicate a need for large excavation trucks.

As we discussed yesterday, Wildcat received a conditional approval from the Mined Land Reclamation Board for plans proposed under CN-01(attached). Under the terms of the conditional approval Wildcat cannot commence mining and milling activities at this site until it submits and receives the necessary approvals from DRMS related to, among other things, detailed works plans, mining plans, water quality information, and design specifications related to Environmental Protection Facilities. Based on the future permitting activities required under CN-01 the DRMS may need to reevaluate the stability of the pre-existing roads dependent upon plans submitted by Wildcat. The DRMS welcomes comments from the County related to any

plans submitted by Wildcat related to this site. The County has had an active role in the State permitting process and it is expected that this will continue.

Please feel free to contact me if there are further questions related to the Division's review of the May Day Idaho Mine Complex. The DRMS is of the opinion that the review of Wildcat's proposed plans, although not specific to sanitation, concrete, and excavation trucks, does ensure that the roads are safe for all intended uses related to a small hard rock mining operation and will be protective of public health, safety, and the environment.

Sincerely,

FOR THE ATTORNEY GENERAL

//s// Jeff M. Fugate

JEFF M. FUGATE
First Assistant Attorney General
Resource Conservation Unit
Natural Resources & Environment Section
303-866-5532
Email: jeff.fugate@state.co.us

STATE OF COLORADO

☒ DIVISION OF RECLAMATION, MINING AND SAFETY

Department of Natural Resources

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☒ December 12, 2011

Roger Tichenor

☒ Wildcat Mining Corporation

1630 Ringling Blvd

Sarasota, FL 34236

George Robinson

☒ Squared Incorporated

5555 DTC Parkway, Suite A-4000

Greenwood Village, CO 80111

Re: Findings and Order, Wildcat Mining Corporation, File. M-1981-185

On December 12, 2011 the Mined Land Reclamation Board signed the enclosed Board Order for the above captioned operation. We strongly advise that you read this document carefully since it may contain provisions which must be satisfied by specific dates to avoid future Board actions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sitira Pope".

Sitira Pope

Secretary to the Board

Enclosure(s)

CERTIFIED MAIL NO.

7009 2820 0003 5701 4040-3722

cc's

Wally Erickson

John Roberts

Jeff Fugate

Penfield Tate

Scott Collignon

Lisa Giovanniello

Poppy Harshman

Phil Vigil

Gary Gibbons

Lake Durango Water Authority

M:\oss\sp2\2011 Board Orders\Cover Letter to wildcat 12-12-11.docx

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BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

IN THE MATTER OF WILDCAT MINING CORPORATION'S APPLICATION TO
CONVERT 110(2) PERMIT TO A 112D-1 PERMIT, File No. M-1981-185

THIS MATTER came before the Mined Land Reclamation Board ("Board") on November 9, 2011 for a hearing to consider the application of Wildcat Mining Corporation ("Operator") to convert permit number M-1981-185 from a 110(2) reclamation permit to a 112d-1 permit. Wally Erickson and Assistant Attorney General Jeff Fugate appeared on behalf of the Division of Reclamation, Mining and Safety ("Division"). Roger Tichenor, Randy Oser, George Robinson, P.G., Daniel Madruga, P.E., Bence Close, P.E., Penfield Tate, Esq. and Christopher J. Neumann, Esq. appeared on behalf of the Operator. Objecting parties, supporting parties, and timely commenting agencies who participated in the Board hearing and were previously identified in the approved Pre-hearing Order, included Scott Collignon, Lisa Giovanniello, Poppy Harshman, Phil Vigil, Gary Gibbons, and Lake Durango Water Authority, who was represented by Charlie Smith. Each objector, supporter, and commenter appeared on his, her, or its own behalf.

The Board, having considered the parties' presentations and testimony, and being otherwise fully informed of the facts in the matter, enters the following:

FINDINGS OF FACT

1. The Operator has a 110(2) reclamation permit for a hard rock gold and silver operation known as the May Day Mine, located in Section 28, Township 36 North, Range 11 West, 10th Principal Meridian. The 9.9-acre site is located outside the town of Mayday in La Plata County, Colorado.

2. The area addressed by the conversion application consists of the May Day Mine (file number M-1981-185), the Idaho Mill (file number M-2006-069), and the Idaho Mine (file number M-2010-003).

3. The Operator is subject to corrective actions arising from five violations regarding the May Day Mine and the Idaho Mill:

a. Violation MV-2009-007 was issued March 11, 2009 for the Idaho Mill for failure to attain an approved permit prior to commencing a mining activity. The Operator constructed a new access road prior to including the road within an approved permit and thereby commenced an unpermitted mining operation. The Board (i) issued a cease and desist order; (ii) ordered

corrective actions to bring the new access road into an approved permit and be fully addressed by a reclamation plan and financial warranty; (iii) ordered the Operator to post \$56,233 financial warranty within thirty days; and (iv) assessed a civil penalty of \$7,600, with \$2,500 suspended if the Operator timely paid the bond and \$2,500 suspended if the Operator timely attained the appropriate permit. The Operator submitted the \$56,233 financial warranty and timely paid the unsuspended \$2,600 civil penalty.

b. Violation MV-2009-033 was issued December 10, 2009 for the Idaho Mill for failure to comply with the cease and desist order issued in violation number MV-2009-007. The Operator continued to use the new access road to advance a mining activity. The Board (i) ordered the scope of the cease and desist order increased; (ii) ordered corrective actions to bring the new access road into an approved permit and be fully addressed by a reclamation plan and financial warranty; (iii) found the existing \$56,233 financial warranty subject to forfeiture; (iv) assessed a civil penalty in the amount of \$3,500, suspending the entire amount pending the Operator's compliance with the Board order; and (v) due to the Operator's failure to comply with the cease and desist order for Violation MV- 2009-007, the Board ordered the Operator to immediately pay the suspended \$2,500 civil penalty from the previous violation. The Operator timely paid the \$2,500 civil penalty.

c. Violation MV-2009-035 was issued December 10, 2009 for the May Day Mine for failure to comply with the conditions of an approved permit. The Operator constructed a portal at the May Day 1 level without approval under the existing mine and reclamation plan. The Board (i) issued a cease and desist order; (ii) ordered corrective actions to update the existing reclamation plan and financial warranty to address the new portal; and (iii) assessed a civil penalty in the amount of \$3,500 and suspended all but \$1,000 pending the Operator's compliance with the corrective actions. The Operator timely paid the \$1,000 civil penalty.

d. Violation MV-2010-001 was issued March 5, 2010 for the May Day Mine for failure to comply with the conditions of an approved permit. The Operator installed an unpermitted mill facility within the unpermitted May Day 1 portal. The Board (i) increased the scope of the cease and desist order; (ii) ordered corrective actions to update the existing reclamation plan and financial warranty to address the mill facility; and (iii) assessed a civil penalty in the amount of \$15,400. The Operator timely paid the \$15,400 civil penalty.

e. Violation MV-2010-020 was issued July 28, 2010 for the May Day Mine for failure to comply with the conditions of an approved permit. The Operator had constructed an unpermitted portal, the Chief Portal, located nearby the existing May Day 3 level. The Board (i) modified the cease

and desist order to allow limited activities to occur at the Division's discretion; (ii) ordered corrective actions to incorporate the Chief Portal into an approved permit and be addressed by the financial warranty; and (iii) assessed a civil penalty in the amount of \$7,888, with all but \$1,000 suspended pending the Operator's compliance with the corrective actions. The Operator timely paid the \$1,000 civil penalty.

4. On June 9, 2010, the Board convened a hearing to consider forfeiture of the financial warranty for the Idaho Mill.

5. On June 29, 2010, the Board issued an order which, among other things, directed the Division and the Operator to find mutually agreeable alternatives to forfeiture of financial warranty and present such alternatives to the Board at the hearing scheduled for July 12, 2010.

6. On July 8, 2010, the Division and the Operator entered into a signed Joint Stipulation to Address All Pending Regulatory Actions ("Joint Stipulation"). In the Joint Stipulation, among other things, the Operator agreed to, by September 30, 2010, file a conversion application to convert its current 110 permit at the May Day Mine to a 112 permit that will cover current and anticipated affected land at the May Day Mine site, Idaho Mill, and the Idaho Mine site. The Board approved the Joint Stipulation by written order dated July 28, 2010 and effective July 29, 2010.

7. Between September 29, 2010 and January 10, 2011, the Operator filed an application and paid the application fee to convert permit M-1981-185 from a 110(2) permit to a 112d-1 permit ("CN-01"). The Division deemed CN-01 filed on January 10, 2011.

8. CN-01 proposes to combine all affected land from the Idaho Mill and Idaho Mine into the May Day Mine; incorporate into one permit (number M-1981-185) an unauthorized road, two unauthorized portals, and an unauthorized mill facility; update the reclamation plan and financial warranty for the site; and expand the permit area to 274.7 acres and expand the affected land to 31.4 acres.

9. The Division issued adequacy letters on March 15 and 29, 2011, notifying the Operator of inadequacies regarding CN-01. The Operator responded to the Division's adequacy issues.

10. On March 30, 2011, the Division inspected the site.

11. On April 27, 2011, the Operator filed an amendment to CN-01.

12. The Division issued a third adequacy letter on May 3, 2011, notifying the Operator of inadequacies regarding CN-01. The Operator responded to the Division's adequacy issues.

13. On May 11, 2011, the Operator requested an extension of the Division's decision deadline to July 14, 2011. The Board granted the request.

14. The Division issued a fourth adequacy letter on May 27, 2011, notifying the Operator of inadequacies regarding CN-01. The Operator responded to the Division's adequacy issues.

15. On June 2, 2011, the Division conducted an inspection of the site.

16. On July 7, 2011, the Operator requested, and the Division supported, an extension of the Division's decision deadline to September 15, 2011. The Board granted the request.

17. The Division issued a fifth adequacy letter on August 5, 2011, notifying the Operator of inadequacies regarding CN-01. The Operator responded to the Division's adequacy issues.

18. On August 24, 2011, the Operator requested, and the Division supported, an extension of the Division's decision deadline to October 13, 2011. The Board granted the request.

19. On September 23, 2011, the Operator requested, and the Division supported, an extension of the Division's decision deadline to the November 2011 Board meeting. The Board granted the request.

20. The Division issued a sixth adequacy letter on September 30, 2011, notifying the Operator of inadequacies regarding CN-01. The Operator responded to the Division's adequacy issues.

21. The Division received thirty-seven timely letters of objection and comments to CN-01. The Division also received five late letters of objection to CN-01 from individuals and agencies. The Division received five letters of objection, support, and comments from individuals and agencies on the amendment to CN-01.

22. On October 26 and 28, 2011, the Board received requests from parties and non-parties to appear at the November 9, 2011 hearing by telephone. The Board granted the requests to appear by telephone. The following objecting parties and commenting agencies appeared at the November 9, 2011 hearing by telephone: Scott Collignon, Lisa Giovanniello, Poppy Harshman, Phil Vigil, and Lake Durango Water Authority (represented by Charlie Smith). Non-parties Travis Custer and Ray

Ferguson also appeared at the hearing by telephone. Supporting parties and non-parties appearing at the hearing in person included party Gary Gibbons.

23. In CN-01, as amended, the Operator delineated a permit and affected land boundaries, addressed protection of off-site man-made structures, committed to fully addressing all adequacy issues through follow-up technical revisions or amendments, and agreed to defer all mining and milling activities until all adequacy issues have been resolved. The Board prefers that the Operator address adequacy issues through amendments.

24. The Division determined that CN-01, as amended, is in compliance with the requirements of section 34-32-115(4), C.R.S. On October 24, 2011, the Division issued its written recommendation and rationale for partial approval of CN-01 with conditions.

25. Partial approval of CN-01 with conditions is necessary to give the Operator the ability to address adequacy issues identified by the Division; to allow the Operator to access the new access road and Chief Portal; conduct geotechnical work at the May Day 1, Chief Portal, and at the new access road; clean up the May Day 1 portal to assess damage; and gather information for future work plans; and gather baseline information through the installation of groundwater monitoring wells.

CONCLUSIONS OF LAW

26. The Board has jurisdiction over the Operator and this matter pursuant to the Mined Land Reclamation Act, Article 32 of Title 34, C.R.S. ("Act").

27. Under the Act, the Division and the Board shall grant a permit to an operator who complies with section 34-32-115(4), C.R.S. CN-01, as amended, minimally complies with section 34-32-115(4), C.R.S.

ORDER

The Board AFFIRMS the recommendation of the Division of Reclamation, Mining and Safety to partially approve with conditions the application to convert permit number M-1981-185 from a 110(2) permit to a 112d-1 permit. The permit conditions recommended by the Division and affirmed by the Board as enforceable provisions of permit M-1981-185 are as follows:

1. The Operator may not commence mining and milling activities until the Division receives and approves, through the Technical Revision or Amendment process as determined by the Division, a revised work plan addressing the stabilization and reclamation of the new access road, and the Division approves the as-built certifications submitted subsequent to the completion of the approved plans.

The new access road was constructed illegally and addressed under Violations MV-2009-007 and MV-2009-033. The Operator may not utilize the road for vehicular access or to otherwise advance the mining operation until fully approved by the Division through the appropriate processes outlined in the Act and Rules and this condition for approval of CN-01. The access road issue may require coordination with other agencies, including but not limited to, La Plata County, the Water Quality Control Division of the Colorado Department of Public Health and Environment ("WQCD"), the U.S. Army Corps of Engineers ("COE"), the U.S. Environmental Protection Agency ("EPA"), and the U.S. Forest Service ("USFS").

2. The Operator may not commence mining and milling activities until the Division receives and approves, through the Technical Revision or Amendment process as determined by the Division, the revised work plan(s) addressing stabilization and reclamation of Little Deadwood Gulch at the Chief Portal and May Day 2 areas, stabilization of the Chief Portal, stabilization of the access road immediately above the Chief Portal, and **the Division approves the as-built certifications submitted subsequent to the completion of the approved plans.** The Chief Portal was constructed illegally and addressed under Violation MV-2010-020. The stabilization issue may require coordination with other agencies, including but not limited to, the WQCD, COE, EPA, and USFS.

3. The Operator may not commence mining and Milling activities until the Division receives and approves, through the Technical Revision or Amendment process as determined by the Division, the revised work plan(s) addressing stabilization of the collapsed adit at the May Day 1 area, construction of a new portal and mill facility in accordance with the Act and Rules, and **the Division approves the as-built certifications submitted subsequent to the completion of the approved plans.** The portal and mill facility were illegally constructed and addressed by Violations MV-2009-035 and MV-2010-001. The portal and mill facility issue may require coordination with other agencies, including but not limited to, the Mine Safety and Health Administration and USFS.

4. The Operator may not commence mining and milling activities until the Division receives and approves, through the Technical Revision or Amendment process as determined by the Division, adequate information for ambient surface and ground water quality for the Division to verify hydrologic baseline conditions, and a hydrologic monitoring plan has been fully approved by the Division and implemented by the Operator as necessary for the **Division to verify compliance with water quality regulations and the Act and Rules.** The Operator has commenced the required monitoring of surface water and has proposed the locations for installation of four initial ground water monitoring wells. The water quality issue may require coordination with other agencies, including but not limited to, the USFS.

5. The Operator may not commence mining and milling activities until the Division receives and approves, through the Technical Revision or Amendment process as determined by the Division, **mining and reclamation plans**, with associated work plans, which satisfy the requirements of Rules 6.4.4, 6.4.5, 6.4.6, and 6.5.


6. The Operator may not commence mining and milling activities until the Division receives and approves, through the Technical Revision or Amendment process as determined by the Division, design specifications certified by a licensed professional engineer for all Environmental Protection Facilities, as required by the Act and Rules, and the Operator satisfies the specific requirements of Rules 7.3 and 7.4. The Environmental Protection Facilities include, but are not limited to, the following: mill building; storage sheds and tanks in which designated chemicals are stored or utilized; tailings facilities; and augmentation pond and its associated pipeline and discharge structure.

7. The Operator may not commence mining and milling activities until the Division receives and approves, through the Technical Revision or Amendment process, an updated Exhibit L and financial warranty addressing all applicable requirements of Rule 4, and specifically, but not limited to, Rule 4.2.1(4) regarding reclamation costs associated with the protection of water resources, including costs to cover necessary water quality protection, treatment and monitoring as required by permit, and the Act and Rules. The existing Exhibit L, submitted by the Operator, does not address this issue and is not adequate for approval.

8. Nothing herein shall be construed as any predetermination by the Division or the Board regarding any Technical Revision or Amendment required in this Order.

DONE AND ORDERED this ^{op}12 day of December December 2011.

FOR THE COLORADO MINED LAND
RECLAMATION BOARD


Barbara Green, Chair

NOTICE OF APPEAL RIGHTS

This order becomes effective and final upon mailing. Any party adversely affected or aggrieved by agency action may commence an action for judicial review by filing

a notice of appeal with the district court within thirty (30) days after the effective date of this order, pursuant to section 24-4-106, C.R.S. (2010). In the event that an appeal is filed, designations of record made in accordance with section 24-4-106(6), C.R.S. should be served on the Board at: 1313 Sherman Street, Room 215, Denver, CO 80203, Attention: Sitira Pope.

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER upon all parties herein by depositing copies
of same in the United States mail, first-class postage prepaid, at Denver, Colorado,
this 12th day of December 2011 addressed as follows:

Roger Tichenor
Wildcat Mining Corporation
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Gary Gibbons
5038 County Road 124

By inter-office or electronic mail to:

Wally Erickson
Division of Reclamation, Mining and Safety
Durango Field Office
691 CR 233, Suite A-2
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By intra-office or electronic mail to:

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