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Durango Field Office  
Division of Reclamation,  
Mining and Safety

Direct Dial: (303) 953-5805

November 20, 2013

Re: San Luis Project/M-1988-112

Dear Mr. Erickson,

This letter is in reference to the September 11, 2013 report of the Division of Reclamation, Mining and Safety (DRMS) for the above named project. In the September 11 report, you mention that this is the second one generated by DRMS in response to a complaint submitted on behalf of the Board of County Commissioner of Costilla County and the Costilla County Conservancy District (County). At the conclusion of the report, you indicate that any response to it should be directed to you.

We appreciate having the opportunity to do so. On behalf of the County, Ed Lobato and I are submitting the County's response to the September 11 report, which includes specific inquiries about the report and the overall status of matters. For easy reference purposes, we are also enclosing a copy of the memorandum attached to the County's complaint to DRMS (Complaint), which was submitted to DRMS on February 26, 2013.

We have the following questions about the report:

- 1) It refers to the Division encountering Allen Jewell, a geotechnical engineer, who was conducting a stability and safety evaluation of the tailings facility (LTF). Mr Jewell reported that he had been retained by the Operator Battle Mountain Resources, Inc. (Report p.3) Has Mr. Jewell ever submitted an oral or written report or written materials to DRMS as to his evaluation of the LTF? Will the County be able to receive a copy of the information that Mr. Jewell has provided to DRMS, or presumably will be providing to DRMS in the future? If so, we would like to receive a copy.

- 2) It indicates that a 20 acre free water pool was observed in the 192 acre LTF and that the Operator indicated that the current depth of the free water pool is approximately 2 feet. (Complaint p.3) The pool reflects the free water surface. The area of containment of water appears to be used as a reservoir and storage facility. Deposition testimony of Bill Lyle and Julio Madrid in November 2012, current and former supervisors of the mine site, indicate that the depth of water in the pool and the volumetric configuration of the area underlying the pool could not be determined as there was no available information to make that determination. (Complaint p.5) If an additional study has been conducted to determine the depth and configuration of the reservoir, and its volumetric capacity, please provide the study or studies. The volumetric capacity of the reservoir and quantity of water contained within it would presumably be a material component of any engineering analysis used in determining the relative risk factors associated with its ability to have safe storage and avoid an unintended release of waters.
- 3) It refers to the observation of a small excavation in the upstream slope of the embankment, which according to Mr. Mark Perry, Dam Safety Engineer for the Colorado Division of Water Resources, must be appropriately backfilled, compacted and the vegetative cover re-established in accordance with the approved designs. (Report p.3) Has any action been taken by Operator to remedy this matter? Also, we are unsure of the significance of the reference to the approved design. Based upon Mr. Dorey's and Ms. Baldridge's testimony that the facility was never designed for long term storage of water (Complaint - 1990 MLRB hearing – Complaint p.3), any repairs to an approved design may not be relevant other than to repair an area in obvious need. The approved design for the facility in the mining phase and its current use deal with two different concepts.
- 4) It refers to the need for the Operator to treat water at the water treatment facility, and dispose of untreated waters. Further, untreated waters, sludge, and brine have been taken to the LTF. The report refers to treatment of waters appearing to be a perpetual activity. (Report p.2) However, the focal point of the County's complaint is that the LTF is being used as a storage facility for untreated waters. As such, we are unsure what is intended by Mr. Perry's note "there is no spillway currently installed for the embankment". (Report p.3) A spillway connotes a means to release waters from the LTF to some downgradient location, which is a result that is unacceptable to the County for reasons set forth in its Complaint. Because the LTF is being used as a reservoir to store untreated waters, at a minimum any analysis should first determine: a) that it was designed and constructed for the purpose of permanent storage; b) that it can be used for safe storage of untreated waters based upon current practices. However, in no circumstance should the LTF be re-designed in a manner to allow

untreated waters to escape the area of confinement. If Battle Mountain intends to convert the LTF to a permanent storage facility for untreated waters (which is unacceptable to the County absent a convincing showing that it is safe practice to do so), it should only be permitted to do so after a clear and convincing showing that the LTF was initially designed and constructed for safe water storage of waters and that in 2013 and future years it continues to be a vessel for safe storage of untreated waters.

- 5) It states that the Operator has completed certain repairs including “installation of a new liner material to replace the eroded liner”. (Report p.3) Have actions been taken by the Operator or by DRMS to determine the viability of the entire liner underlying the LTF as it impacts its ability to contain water? Note the testimony by the Operator in the 1990 MLRB transcript that “the synthetic liner was designed for use during the operational period of the mine, and not for an indeterminate period of time”. (Complaint p.3) Further reclamation at the mine site should have been achieved 10-15 years after mining had ceased (or by 2012). (Complaint p.3, Lyle testimony)
- 6) Have repairs been conducted on the disturbed area that is 200 feet long by 50 feet wide? (Report p.4)
- 7) There is a seep associated with the outlet of the drainage blanket for the tailing pond. Routine maintenance and other actions are required to ensure its continued function. (Report p.4) Do we know if the recommended maintenance including sediment clean-out and stabilization of the slope has been accomplished?
- 8) Do we know if a properly designed debris screen was installed to protect the inlet for the drop structure?(Report p.4)
- 9) In reference to the June 2103 report of Mark Perry, there are several areas of interest. Mr. Perry’s attached June 3, 2013 letter to you notes “we have not assigned an overall safe storage level, as the dam is an Exempt Structure per SEO Rules and Regulations”. Further, he states in his report that “the SEO does not have expertise or experience specific to tailings dams. Our recommendations and observations are provided based upon Dam Safety experience with dams and associated facilities designed to impound water” (Report p.4) A key consideration is that in 2011 and 2012 the LTF was not only used as a water storage facility, but annually over 150 ac.-ft of untreated waters were transferred to it. (Complaint, p.2) referring to Operator’s records). Accordingly, Mr. Perry’s review of the LTF as a water storage facility would be relevant. Further, his report states: Upstream Slope -“during normal operations the facility’s water surface is several hundred (horz.) feet away from the

crest; the only potential for slope erosion would be from a large flood event” (Report p.1) Further, in the Spillway section, he states “It is not clear to us how the ditch and adjacent tailings embankment would perform in larger floods...” (Report p.2) Based upon the major flood events in Boulder, Weld and other counties in 2013, catastrophic flood events obviously can and do occur;

- 10) Mr. Perry’s report mentions that under the Crest section “the owner recently had a stage capacity and dam crest survey performed”. (Report p.1) We would like to review that document. Further, Mr. Perry’s recommendation was that the dam crest elevation is maintained for the original design criteria (Report p.1). Once again, the Operator’s testimony is that the intended use of the LTF at the time it was built is different than its current use as a permanent water storage facility.
- 11) From Mr. Perry’s report, it is not clear if the Operator’s intention is to use the LTF as a permanent storage facility or its desire is to move water away from the free water pool. For example, Mr. Perry mentions under the Outlet section that “During the normal operations, the facility holds only a small amount of surface water” (Report p.2). It is not clear if he is referring to the LTF.

Also, my understanding is that several weeks ago you had a conversation with Ed Lobato as to the status of Operator Battle Mountain’s submission of a response to this report and advised that none had been submitted as of that date. Has a response now been submitted by Operator Battle Mountain? If not, has a time frame been established for it to do so?

We look forward to your response to this letter. Thank you.

Very truly yours,



John C. McClure

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