

INFORM's PETITION TO INTERVENE
(7 PAGES)

BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

IN THE MATTER OF GOLD EAGLE MINING INC.'S PETITION FOR A DECLARATORY
ORDER PERMIT NOS. M-1977-248 (JD-5 MINE), M-1977-297 (BURROS MINE),
M-1978-342 (ELLISON MINE), AND M-1978-311 (HAWKEYE MINE)

PETITION TO INTERVENE

The Information Network for Responsible Mining (INFORM) hereby timely requests that the Board grant this Petition to Intervene in the above captioned matter under Rule 2.5.5 of the Board's Hard Rock/Metal Mining Rules and Regulations. In this proceeding, Gold Eagle Mining, Inc. has requested a declaratory order to extend an enforcement deadline related to the company's four mines in western San Miguel and Montrose counties. As described below, the operator of these mines has neither submitted the Environmental Protection Plans necessary to remain in active status, met any of the requirements to qualify for temporary cessation status, nor made the necessary filings with the federal agencies responsible for approving reclamation plans for the sites. This is despite having been noticed and warned repeatedly that failure to do so would result in enforcement actions from the Division and Board. In its latest submittal, the operator seeks the Board's endorsement of its plans to forestall any meaningful progress toward a resolution of these longstanding issues. Because the operator has failed to demonstrate a reasonable degree of compliance with the Mined Land Reclamation Act, INFORM requests the Board deny the requested open-ended delays sought by the operator and instead require a meaningful compliance schedule that includes, at minimum, an order to file the required reclamation plans with the Department of Energy by the current enforcement deadline of May 31, 2014. As confirmed by correspondence in the mine file, the injunction issued by Federal Judge Martinez in 2011 poses no barrier to the review of reclamation plans by the relevant state and federal agencies. In fact, the injunction was clarified in 2012 to ensure necessary reclamation activities could go forward during the pendency of the injunction. In short, state enforcement action is necessary where the federal injunction has been improperly relied upon by Gold Eagle Mining as an excuse to ignore Colorado laws.

Statement of Protected Interest

INFORM is a citizens-based nonprofit organization incorporated in Colorado. INFORM's address is P.O. Box 27, Norwood, CO 81423. INFORM is an interested and affected party and is entitled to protection under the Colorado Mined Land Reclamation Act. As described in the attached Declaration of Jennifer Thurston, INFORM's executive director, INFORM staff and members are adversely affected and aggrieved in this case by the lack of any meaningful

reclamation at these mine sites, which has gone uninitiated despite the multiple deadlines set by DRMS. INFORM members use and enjoy the public lands upon which these mines are located for recreational, conservation and aesthetic purposes, and those uses are impaired and degraded by the ongoing lack of meaningful reclamation. The relief sought in this Petition for Intervention will remedy that impairment, at least in part. As such, INFORM has demonstrated the requisite interest under the Mined Land Reclamation Act (MLRA).

Factual Background

The Colorado Legislature in 2008 passed HB 08-1161, which specified that all uranium mining operations are 'designated mining operations' under the MLRA. [See C.R.S. § 34-32-103(3.5)(a)(III).] The effect of this provision is to confirm that all uranium mines must either develop an Environmental Protection Plan in compliance with the MLRA or fully reclaim the mines and release the permits. Recognizing these requirements, the Division appropriately issued numerous requests and information letters to all uranium mine operators about how to comply with the law, and the Division set a final compliance deadline for all operators of Oct. 1, 2012.

Despite the well-communicated Oct. 1, 2012, deadline, Gold Eagle Mining, Inc. did not comply with this deadline, but submitted insufficient plans to meet the law's requirements.¹ In an effort to persuade Gold Eagle Mining to come into compliance, the Division granted its first deadline extension until Dec. 21, 2012, and informing the operator, "As noted, Gold Eagle has until December 10, 2012 to correct the amendment application adequacy issues for all permits noted or face enforcement action."² Again, however, Gold Eagle Mining did not meet the deadline. On Dec. 21, 2012, INFORM wrote the Division director and requested that the law be enforced. [See Attachment A.]. On Jan. 7, 2013, Gold Eagle Mining filed a Notice of Reclamation to the Division and agreed to fully reclaim the mines while retaining active status instead of submitting the Environmental Protection Plans.³ On Feb. 22, the Division accepted the Notice of Reclamation but told Gold Eagle Mining that the mines were not eligible for active status.⁴

Rather than comply with its own proposed plan to reclaim the mines, however, Gold Eagle Mining, Inc., submitted notices of temporary cessation and again claimed that it was

¹ DRMS letter to Gold Eagle Mining, Inc., Notice of Incomplete EPP Submittals, dated Oct. 9, 2012. In permit file at: <http://drmsweblink.state.co.us/drmsweblink/0/doc/967200/Electronic.aspx?searchid=23213ca6-1b7c-484d-9442-c041a6972f7d>

² Ibid.

³ Gold Eagle Mining, Notice of Reclamation, received Jan. 7, 2013. In permit file at: <http://drmsweblink.state.co.us/drmsweblink/0/doc/973804/Electronic.aspx?searchid=23213ca6-1b7c-484d-9442-c041a6972f7d>

⁴ DRMS, Notice of Outstanding Issues, Feb. 22, 2013. In permit file at: <http://drmsweblink.state.co.us/drmsweblink/0/doc/977162/Electronic.aspx?searchid=23213ca6-1b7c-484d-9442-c041a6972f7d>

prohibited from conducting any reclamation work.⁵ INFORM objected, seeking a hearing before the Board as to the ineligibility of the mines for temporary cessation status.⁶ Before the matter could be brought to hearing before the Board, Gold Eagle Mining withdrew its request on May 6, 2013, and finally agreed to commence reclamation of the mines.⁷ In response, the Division set a final deadline for completion of reclamation of May 31, 2014, and again warned that failure to reclaim was subject to enforcement action.⁸ On Dec. 9, 2013, the Division approved a technical revision concerning the details of the reclamation plans. In the approval, the Division stated, "Please be aware the Division is not approving any modification to the May 31, 2014 deadline by which Gold Eagle must complete all reclamation earthwork and initial seeding... Failure to comply with the May 31, 2014 deadline may result in the Division bringing the possible violation before the Mined Land Reclamation Board for a formal hearing..."⁹

In its Dec. 9, 2013, letter to Gold Eagle Mining, the Division recognized that because the mine sites at issue are located on public land uranium lease tracts managed by the U.S. Department of Energy, the reclamation plan would have to be submitted to the Department of Energy for concurrence. Based on a Sept. 30, 2013, letter from the Department of Energy to Gold Eagle Mining, it appears that the operator submitted its proposed technical revisions to the Department of Energy on Aug. 9, 2013.¹⁰ However, in response, the Department of Energy informed Gold Eagle Mining "that the referenced [technical revision] submittals do not meet the requirements set forth in the respective lease agreements for reclamation plan submittals...." The Department further instructed the operator to:

⁵ Notices of Temporary Cessation for Burros, Ellison, Hawkeye mines. Dated Jan. 24, 2013, and received by the Division on March 5, 2013. In permit files. Burros: <http://drmsweblink.state.co.us/drmsweblink/0/doc/977809/Page1.aspx?searchid=fa355f5c-4d3f-4120-8b71-aa1eff7dfc6> Ellison: <http://drmsweblink.state.co.us/drmsweblink/0/doc/977810/Page1.aspx?searchid=d486857f-a6d5-4e4c-965c-23bf4fd90a3d> Hawkeye: <http://drmsweblink.state.co.us/drmsweblink/0/doc/977812/Page1.aspx?searchid=6113735f-927e-44e8-a382-bd3b63b0ddac>

⁶ INFORM, Objection to Notices of Temporary Cessation for the Burros, Ellison and Hawkeye Mines, April 16, 2013. In permit file at: <http://drmsweblink.state.co.us/drmsweblink/0/doc/982091/Electronic.aspx?searchid=23213ca6-1b7c-484d-9442-c041a6972f7d>
INFORM, Objection to Notice of Temporary Cessation for the JD-5 Mine, April 16, 2013. In permit file at: <http://drmsweblink.state.co.us/drmsweblink/0/doc/982090/Electronic.aspx?searchid=32493e45-9e51-48a0-9a9e-118e0951e9b5>

⁷ Gold Eagle Mining, Withdrawal of Temporary Cessation, May 7, 2013. In permit file at: <http://drmsweblink.state.co.us/drmsweblink/0/doc/983847/Electronic.aspx?searchid=23213ca6-1b7c-484d-9442-c041a6972f7d>

⁸ DRMS letter to Gold Eagle Mining re: Withdrawal of Temporary Cessation Notices, May 10, 2013. In permit file at: <http://drmsweblink.state.co.us/drmsweblink/0/doc/983195/Page1.aspx?searchid=23213ca6-1b7c-484d-9442-c041a6972f7d>

⁹ DRMS letter to Gold Eagle Mining re: Technical Revisions approved and adequate. In permit file at: <http://drmsweblink.state.co.us/drmsweblink/0/doc/1011944/Electronic.aspx?searchid=23213ca6-1b7c-484d-9442-c041a6972f7d>

¹⁰ Department of Energy letter to Gold Eagle Mining re: Reclamation Requirements for Mining Operations, Sept. 30, 2013. In permit file at: <http://drmsweblink.state.co.us/drmsweblink/0/doc/1002399/Electronic.aspx?searchid=23213ca6-1b7c-484d-9442-c041a6972f7d>

Please submit a reclamation plan for each operation in accordance with [the] lease stipulations. Once each plan is received, DOE and its contractor staff will review all documents and correspondence associated with the original mining plan for the lease and any subsequent amendment(s) to the plan, including the respective approval letter(s). As part of that review process, an on-site examination will be scheduled for each plan to determine exactly what actions are required during the reclamation of each mining operation.¹¹

The Department of Energy then referenced the ongoing federal court injunction on approval of certain activities on the sites until it completes a Programmatic Environmental Impact Statement (PEIS) for the lease tracts.

To date, there does not appear in the Division's record for any of the mines at issue any evidence that Gold Eagle Mining, Inc. has submitted any additional information to the Department of Energy, despite having been requested to do so some eight and a half months ago. Indeed, despite having already received the request from the Department of Energy and the assurance that the Department "will review all documents" and conduct "an on-site examination . . . to determine what actions are required during the reclamation,"¹² Gold Eagle Mining represented to the Division in a Dec. 6, 2013, letter that "DOE has informed us that reclamation is not an approved activity during the PEIS process. Nor will they review any reclamation plans during the PEIS process or review period and litigation process."¹³ Gold Eagle Mining excuses its delay in obtaining the necessary review and approvals in its Petition for Declaratory Order and requests "the Board waive the current reclamation schedule for these properties pending the Courts (sic) lifting of its activity prohibition...."¹⁴ [Emphasis supplied]. Nothing in the injunction's "activity prohibition" prevented Gold Eagle Mining from obtaining the necessary state and federal review and approvals. The ongoing delay is unreasonable and cannot be justified by the injunction, but further delay can be avoided by enforcement of state laws.

The Petition for Declaratory Order

In its Petition for a Declaratory Order, Gold Eagle Mining requests an open-ended waiver of all deadlines associated with achieving reclamation on the mine sites. The basis for this appears to include the patently inaccurate assertions that the Department of Energy is somehow prohibited from reviewing reclamation plans due to the injunction. As detailed above, the Department of Energy has specifically requested that a compliant reclamation plan be submitted and has committed to conducting a full review. INFORM asserts that there is no

¹¹ Ibid.

¹² Ibid.

¹³ Gold Eagle Mining letter to DRMS re: acceptance of technical revisions. Dec. 6, 2013. In permit file at: <http://drmsweblink.state.co.us/drmsweblink/0/doc/1011755/Page1.aspx?searchid=4b7a4587-6c5a-4f90-b03c-07e3aef56392>

¹⁴ Gold Eagle Mining, Petition for Declaratory Order, May 7, 2014. In permit file at: <http://drmsweblink.state.co.us/drmsweblink/0/doc/1036264/Electronic.aspx?searchid=806bbe4e-9581-4313-8152-31f38d7a0285>

justifiable basis to delay the initiation of this process, even if Gold Eagle Mining's assertions regarding the prohibitions on commencement of actual reclamation work were accurate.

Gold Eagle Mining further wrongly asserts that it cannot conduct reclamation activities at the mines because the Department of Energy has not approved and will not approve reclamation plans prior to completion of the PEIS process and the lifting of the injunction. Importantly, the Department of Energy issued that Record of Decision on May 12, 2014.¹⁵ The Department also announced its intent to select its Preferred Alternative (reauthorizing the leasing program) when it released the Final Environmental Impact Statement on March 21, 2014.¹⁶ Any delay is created by the actions of Gold Eagle Mining.

With respect to the injunction, Gold Eagle Mining, Inc. refers to the Oct. 26, 2011, injunction issued by a federal court. INFORM is co-plaintiff in the legal suit against the Department of Energy that placed the injunction on the Energy Department; the injunction was not placed on Gold Eagle Mining. Significantly, the court injunction was amended on Feb. 27, 2012, to clarify the types of activities that could occur, but Gold Eagle Mining does not reference the critically important terms of the amended injunction. [See Attachment B, U.S. District Court Order, Feb. 27, 2012, in re: Colorado Environmental Coalition et al. v. Office of Legacy Management.]

Since the injunction was amended, INFORM has repeatedly stated its position to the Division that the injunction does not relieve operators from their duty to comply with state law and undertaking those actions necessary to maintain the mines, including reclamation. In its decision, the Court stated: "The Court finds good cause to modify the injunction to allow those activities on Uranium Leasing Management Program lands that are absolutely necessary to comply with an order from a federal, state, or local government regulatory agency." [Att. B, item 5, p. 6.] Further, the court also stated: "The Court finds good cause to amend the injunction to allow certain reclamation activities on ULMP lands that are absolutely necessary to remediate dangers to the public health, safety and environment on ULMP lands caused by major storm events, acts of vandalism, or land subsidence." [Att. B, item 6, p. 6] To clarify the point even further, the court described seven other broad categories of activities that were allowed and also made a specific reference to final reclamation activities by specifying that "Defendants will not be allowed to close or gate open mine portals, close mine shafts, or close mine vents, unless ordered to do so by a federal, state, or local government regulatory agency." [Emphasis added. See Att. B, item 6, p. 7.]. Gold Eagle Mining has done nothing. [See Attachment C. Quarterly Report for comparisons of activities conducted by other operators under injunction.]

Thus, the amended injunction specifically makes allowance for reclamation activities mandated by state law. In fact, the Department of Energy has repeatedly informed Gold Eagle Mining of its obligations to comply with the Division's requirements with Colorado law. In an April 25, 2012, letter to Gold Eagle Mining, the Department of Energy explained the requirements of a court injunction placed on the Department, as well as explaining the process by which Gold

¹⁵ Federal Register, Record of Decision for the Uranium Leasing Program Programmatic Environmental Impact Statement, May 12, 2014. Available online at: http://ulpeis.anl.gov/documents/docs/ULP_PEIS_ROD.pdf

¹⁶ Department of Energy news release, March 21, 2014. Available online at: http://ulpeis.anl.gov/documents/docs/DOE_Final_ULP_PEIS_news_release.pdf

Eagle Mining should notify the Department in order to gain advance approval of any reclamation activities that are “absolutely necessary” as defined by the court.¹⁷

Given all of the above, INFORM asserts that there is absolutely no reason for the Board to simply “waive” all deadlines associated with the reclamation process at these mines. At minimum, there is good cause for the Board to require that Gold Eagle Mining immediately submit all required information to the Department of Energy to enable that agency to commence its required review – while any issues related to the injunction are resolved. Otherwise, reclamation may be delayed even further for no reason.

INFORM has raised significant concerns regarding the unreclaimed condition of the Gold Eagle mines, both in discussions with the Division and in numerous public forums. INFORM continues to believe that the Gold Eagle mines represent egregious examples of mismanagement and neglect and represent a significant public concern due to their environmental impacts, uncontrolled storm water runoff, and the potential for toxic and radioactive contaminants to continue migrating offsite, among other concerns.¹⁸ Of all the uranium companies in Colorado, only one other company failed to fully comply with HB 08-1161 and that company was brought to the Board for enforcement proceedings in March 2014. In contrast, Gold Eagle Mining, Inc., has repeatedly been allowed to slip through the requirements, remain noncompliant, and sidestep enforcement.

Relief Requested

INFORM requests that the Board deny the Petition for Declaratory Order, and instruct the Division to commence an enforcement action to ensure compliance with the reclamation orders in effect for the Gold Eagle Mining mines. In lieu of an immediate enforcement action, INFORM requests that the Board maintain the existing May 31, 2014, deadline and apply that deadline to a requirement that Gold Eagle Mining submit compliant reclamation plans to the Department of Energy, as that agency requested over eight months ago, in September 2013. As part of its Order, and given Gold Eagle Mining’s repeated and ongoing lack of timely compliance with Division deadlines, the Board should require Gold Eagle Mining to submit monthly written reports detailing the progress associated with the Department of Energy review. Lastly, the Board should set an affirmative deadline for Gold Eagle Mining to commence reclamation work no later than 30 days following receipt of approval of the final reclamation plans from the Department of Energy and the Division. INFORM believes that only constant supervision, consisting of reporting requirements combined with a concrete deadline for reclamation commencement following approval of the reclamation plans, will result in meaningful compliance with the MLRA.

¹⁷ Department of Energy, letter to Gold Eagle Mining re: requirements of injunction, April 25, 2012. In permit file at: <http://drmsweblink.state.co.us/drmsweblink/0/doc/954687/Electronic.aspx?searchid=23213ca6-1b7c-484d-9442-c041a6972f7d>

¹⁸ See, for example: Burros Mine, Nov. 12, 2012, inspection report, in permit file: <http://drmsweblink.state.co.us/drmsweblink/0/doc/969839/Electronic.aspx?searchid=980cd32a-940d-4007-a3ef-53255338e06f> or Ellison Mine, inspection report, Oct. 16, 2012, in permit file at <http://drmsweblink.state.co.us/drmsweblink/0/doc/969350/Electronic.aspx?searchid=98ae3bb1-879b-43b6-bfed-9168fb6a75e6> or Hawkeye Mine, Oct. 16, 2012 inspection report, in permit file at <http://drmsweblink.state.co.us/drmsweblink/0/doc/969838/Electronic.aspx?searchid=8f44d806-b9b9-47a3-a926-076d6bb98305>

Respectfully submitted,

Jennifer Thurston
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JENNIFER THURSTON'S DECLARATION
(3 PAGES)

BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

IN THE MATTER OF GOLD EAGLE MINING INC.'S PETITION FOR A DECLARATORY
ORDER PERMIT NOS. M-1977-248 (JD-5 MINE), M-1977-297 (BURROS MINE),
M-1978-342 (ELLISON MINE), AND M-1978-311 (HAWKEYE MINE)

PETITION TO INTERVENE

I, Jennifer Thurston, make this declaration based upon my personal knowledge and belief and state:

1. I reside in Norwood, Colorado. I am over 18 years of age and competent to testify.
2. I am a member of and Executive Director of Information Network for Responsible Mining (INFORM). INFORM is a nonprofit organization with the mission of educating the public about the dangers that exist when unsafe and irresponsible mining practices are permitted. Through the dissemination of information and education, INFORM helps organize residents in local communities most threatened by these practices to protect water quality, quality of life and the local economy. INFORM engages in regulatory processes to ensure protection of water quality and other natural resources and quality of life. INFORM uses the Division of Reclamation Mining and Safety oversight to monitor the status of mines and mills and the potential and actual impacts on the environment and human health.
3. INFORM staff and members are adversely affected and aggrieved in this case. I have personally visited the lands and waters at and near the sites of Gold Eagle Mining, Inc.'s permitted mines. During those visits, I hike, sightsee, watch wildlife, and otherwise use and enjoy the lands, including public lands, at and near these sites. I have

visited the Slick Rock and Paradox areas frequently and for many years, and cherish the quality and solitude of the public lands in these areas and have nurtured concerns for the health of these lands and the streams that flow through them. The dilapidated condition of these mines impacts the beauty and enjoyment of adjacent public lands and adversely affects INFORM's members, who share concerns about the impacts of uranium mining to Colorado's environment.

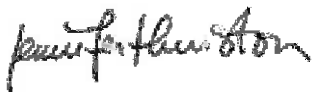
4. The impacts to INFORM and its members would be exacerbated should the mines be allowed to further delay reclamation and cleanup activities or to continue to operate in a manner that does not comply with the Colorado Mined Land Reclamation Act. The recreational, aesthetic, wildlife, and conservation interests of INFORM's members will continue to be impaired and denied remedy. The condition of the mines creates unacceptable visual impacts to public lands that are located in scenic areas and make them less enjoyable for visiting, hiking, hunting and other activities. Wildlife are displaced from mine sites that are unreclaimed and habitat is impacted and altered, affecting the interests of INFORM's members, who advocate for strong environmental protections and improvements to enhance the health of public lands.

5. INFORM has an interest in the proper regulation of mining activities related to these sites. These include substantive as well as procedural and informational interests. Should these mines not be required to comply and be subject to the proper regulatory process, INFORM, its staff and members, risk being denied the relief of seeing the mines fully reclaimed. INFORM has demonstrated a long-standing interest in these matters and helped effect changes in state law and policy that are intended to improve the

environmental conditions at uranium mining sites in Colorado. To this end, INFORM's staff and members lobbied for the passage of HB 08-1161, which was approved by the Colorado Legislature and signed into law in 2008. INFORM and its members also joined other conservation organizations in a lawsuit filed against the Department of Energy in 2008, which sought a comprehensive environmental impact statement to fully document and determine the environmental conditions at numerous uranium mines, including those leased by Gold Eagle Mining, Inc.

7. I intend to visit these lands in the future to pursue the interests described above and continue to make use of the lands and waters affected by the mines. INFORM's staff and members also intend to continue to pursue every future opportunity to provide input and public comments to the Division and Board with respect to the reclamation and permitting of Gold Eagle Mining, Inc.'s, mines.

Executed on May 14, 2014

A handwritten signature in dark ink, appearing to read "Jennifer Thurston". The signature is fluid and cursive, with the first name being more prominent.

Jennifer Thurston
Executive Director
Information Network for Responsible Mining

INFORM's ATTACHMENT A
(4 PAGES)

INFORM

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RESPONSIBLE MINING

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December 21, 2012

To: Ms. Loretta Pineda
Director, Colorado Division of Reclamation Mining and Safety
1313 Sherman Street, Room 215
Denver, CO 80203
Via email to loretta.pineda@state.co.us

Re: Gold Eagle Mining, Inc., Burros Mine Permit No. M-1977-297
Gold Eagle Mining, Inc., Hawkeye Mine Permit No. M-1978-311
Gold Eagle Mining, Inc., Ellison Mine Permit No. M-1978-342
Gold Eagle Mining, Inc., C-JD-5 Mine Permit No. M-1977-248

Dear Ms. Pineda,

As you are aware, the Information Network for Responsible Mining closely monitors the work of the Division of Reclamation, Mining and Safety and mine permitting activities in Colorado and regularly comments on permit reviews, including all uranium-related proposals. We wish to congratulate the Division on its current implementation of HB 08-1161, the law that required all uranium mines for the first time in Colorado's history to develop and implement environmental protection plans and to come into compliance with current operating and reclamation standards under the authority of the Mined Land Reclamation Board. INFORM and numerous other conservation organizations in Colorado supported the law's passage in 2008 and the Division's strong efforts to implement its requirements are warmly received. We understand that implementation of this law has been lengthy and creates many challenges for the Division as it ushers in a more protective level of oversight upon a restive industry.

In particular during this process, the state, status and siting of the mines operated by Gold Eagle Mining, Inc., have been of considerable concern to us, and efforts by the Division to improve conditions at the Burros, Ellison, Hawkeye and JD-5 mines have been critically important.

Because of the especially problematic surface conditions and inherent neglect at these mines, we have long held a position that they should be released and reclaimed. In addition, the three Slick Rock mines pose serious and substantive harm to the Dolores River and we have long supported the position that not only should these mines be released and reclaimed but that these tracts should be permanently removed from the Department of Energy's Uranium Leasing Program because of their inappropriate siting and conflicting use with the surrounding public lands.

Following the passage of HB-1161, the Division began efforts to implement its requirements and engaged in an extensive and thorough notification process with Gold Eagle Mining about how to come into compliance with the law, subject to enforcement provisions. Gold Eagle Mining was formally notified on June 6, 2008, that it should comply with the updated permitting standards, including required improvements to protect ground and surface water at Designated Mining Operations. On Sept. 30, 2011, Gold Eagle Mining received a similar notice from the Division, outlining the process for coming into compliance with HB-1161. At this time, Gold Eagle was notified that its options were to either 1) demonstrate compliance; 2) release the permit and reclaim the site; 3) submit a complete Environmental Protection Plan for review before Oct. 1, 2012; or 4) file for an administrative exemption. Gold Eagle Mining did not take action to demonstrate compliance, nor did it seek an exemption. On Jan. 24, 2012, the Division reminded Gold Eagle that the intermittent status of all its mines was under review and that the permits would have to come into full compliance with the Mined Land Reclamation Act and the Board's Rules and Regulations. Because Gold Eagle Mining's permitted mines are leased from the Department of Energy, that agency notified the operator on May 2, 2012, that it must fully comply with all Colorado laws and regulations under the terms of its leases. And on Sept. 5, 2012, Gold Eagle Mining was reminded again by the Division that the mines must come into full compliance and submit Environmental Protection Plan applications before Oct. 1, 2012.

On Oct. 1, Gold Eagle Mining did submit four EPP applications to the Division, which quickly determined that the filings were insufficient and could not be certified as complete. Gold Eagle Mining was provided an additional two months -- an informal extension of a deadline already four years old -- to complete the filings and initiate a review. Gold Eagle Mining was also required by Oct. 1 to address the intermittent status of the mines, which have no record of operating or producing ore on file with the Division and which have been idle for the past three decades, if not longer. Although it was given an extensive amount of time and numerous notices from the Division, on Dec. 10, Gold Eagle Mining did not provide additional filings for review. By doing so, as a *de facto* matter of law, Gold Eagle Mining has initiated a release of all four permits.

This final act to release the permits does not remove the need to deliberate over Gold Eagle Mining's lengthy history of noncompliance with the Board's Rules and Regulations and Colorado law. Under the terms of its permits, Gold Eagle Mining is required to conduct active mining activities at the mines, specifically, the production of ore. Gold Eagle Mining has failed, through the years, to properly document activity at the mines and their status in annual reports to the Division. In fact, there is no record of ore production at any of these mines any later than

1983, and it is possible active mining ceased earlier. This extended idleness is specifically prohibited under the Mined Land Reclamation Act, which clearly states that "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." [Please see C.R.S. § 34-32-103(6)(a)(III).] We are observing now an overdue but final closure for mines that have been left untended for three decades. One fundamental conviction that spurred the passage of HB 1161 was a legislative desire to address the noncompliant status of uranium mines such as these, which persist as an environmental hazard and create burdens for the public.

INFORM now looks forward to participating in the public review of the reclamation plans for the Burros, Ellison, Hawkeye and JD-5 mines. Because of the poor condition of the mines and the environmental degradation in plain evidence at each of them, we encourage you to revoke the existing bonds in your ongoing enforcement of these permits and initiate the reclamation work directly. Simply put, these are contemporary abandoned mines in the making, and that regrettable progress must be swiftly halted.

There is a dire need to update the reclamation plans for each of these mines, as they all pose significant hazards to the public and the environment. The reclamation plans that are in place have not been significantly updated since the late 1970s, when they were first approved under standards that are considered weak by today's measures. The JD-5 is in a deplorable state and poses a safety hazard to the public, who can access the unsecured, decrepit shaft and dangerous hoist house quite easily from a main county road. Directly adjacent to the road is a stockpile of low-quality ore that has been sitting there for so many decades that it has managed to sprout weeds. Because it is ore and not waste rock, it most likely has elevated radiation levels, even though the area around it is regularly grazed by livestock and used by travelers and recreationists.

The status of the Slick Rock mines -- the Burros, Ellison and Hawkeye -- are of paramount concern to us. These mines are in close proximity to the Dolores River, just downstream of a heavily used boat launch, near residences, and in a scenic canyon that is treasured by anglers, boaters, birders and quiet users of all sorts. At the mines, stormwater management features are in a state of disrepair and have been subject to serious neglect for years, allowing radioactive and toxic contaminants to migrate from the mine sites directly into the river. This neglect is tragic, as the Dolores River is not just loved by people, but provides an important riparian ecosystem and critical habitat for mammals, raptors, as well as sensitive fish species that state and federal agencies are actively trying to restore. The side canyons immediately surrounding these mines are home to an introduced herd of desert bighorn, another species of concern subject to special management from state and federal agencies.

Updating the reclamation plans is an important task for the Division to undertake and a crucial one to improving the environmental conditions at each of these mines. Again, we look forward to participating and commenting on this forthcoming review to ensure that the highest and most protective reclamation standards are put in place at these critical locations. We also look forward

to continuing to support your efforts to uphold the standards of the Colorado Mined Land Reclamation Act and the necessary requirements that help protect our environment, clean air and healthy rivers.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Thurston". The signature is fluid and cursive, with the first name "Jennifer" written in a larger, more prominent script than the last name "Thurston".

Jennifer Thurston
Executive Director
INFORM

Cc: Representative Don Coram, President, Gold Eagle Mining, Inc.
Ms. Laura Kilpatrick, Realty Officer, DOE Office of Legacy Management

INFORM'S ATTACHMENT B
(12 PAGES)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez**

Civil Action No. 08-cv-01624-WJM-MJW

COLORADO ENVIRONMENTAL COALITION,
INFORMATION NETWORK FOR RESPONSIBLE MINING,
CENTER FOR NATIVE ECOSYSTEMS,
CENTER FOR BIOLOGICAL DIVERSITY, and
SHEEP MOUNTAIN ALLIANCE,

Plaintiffs,

v.

OFFICE OF LEGACY MANAGEMENT, and
UNITED STATES DEPARTMENT OF ENERGY,

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANTS' MOTION FOR RECONSIDERATION**

This matter is before the Court on Defendants' Motion to Reopen and for Reconsideration of October 18, 2011 Order. (ECF No. 95.) Plaintiffs have filed a Response to the Motion (ECF No. 100), and Defendants have filed a Reply (ECF No. 101). The Court hereby REOPENS this action for the limited purpose of ruling on Defendants' Motion for Reconsideration. See D.C.COLO.LCivR 41.2. Having carefully considered the arguments presented, Defendants' Motion for Reconsideration is GRANTED IN PART and DENIED IN PART.

I. BACKGROUND

The Uranium Lease Management Program ("ULMP") is a uranium mining program administered by Defendants in the Uravan Mineral Belt in Mesa, Montrose, and

San Miguel Counties in southwestern Colorado. Plaintiffs brought this action to challenge (1) Defendants' 2007 decision to expand the ULMP, (2) Defendants' issuance of leases to uranium mining companies under the expanded ULMP, and (3) Defendants' approvals of exploration or reclamation activities on certain lease tracts.

The Court, in its October 18, 2011 Opinion and Order, held that Defendants' 2007 Environmental Assessment ("EA") and Finding of No Significant Impact ("FONSI") approving the expansion of the ULMP violated the National Environmental Policy Act ("NEPA") and Endangered Species Act ("ESA"). (ECF No. 94.) As a result, the Court invalidated the EA and FONSI, ordered Defendants to conduct a NEPA- and ESA-compliant environmental analysis on remand, stayed the leases already issued by Defendants, enjoined Defendants from issuing any new leases on ULMP lands, and enjoined Defendants "from approving any activities on lands governed by the ULMP, including exploration, drilling, mining, and reclamation activities" (collectively, the "Injunction"). (*Id.* at 52.)

II. ANALYSIS

A. Parties' Arguments

In their Motion for Reconsideration (the "Motion"), brought under Federal Rule of Civil Procedure 59(e), Defendants argue that:

- (1) the Injunction is not warranted and constitutes manifest legal error;
- (2) the Court should reconsider the Injunction given that Defendants have conducted further steps in completing an Environmental Impact Statement ("EIS"); and
- (3) the Court should at least modify the Injunction to allow:

- (a) activities on ULMP lands that are necessary to complete the EIS;
- (b) activities on ULMP lands that are required to comply with orders from government regulatory agencies; and
- (c) certain reclamation activities on ULMP lands.

In response, Plaintiffs argue that the Motion should be denied because Defendants failed to meaningfully confer with Plaintiffs prior to filing the Motion, and because none of the relief sought is warranted.

B. Legal Standard

"A Rule 59(e) motion to alter or amend the judgment should be granted only to correct manifest errors of law or to present newly discovered evidence." *Phelps v. Hamilton*, 122 F.3d 1309, 1324 (10th Cir. 1997) (quotation marks omitted); *see also Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000) ("Grounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice.").

C. Discussion

1. Meet-and-confer requirement

Plaintiffs argue that the Motion should be denied because Defendants failed to meaningfully meet and confer prior to filing the Motion. The Court agrees that Defendants' counsel's last minute efforts to meet and confer on the day of the deadline to file a timely Rule 59(e) motion were inadequate. However, under the unique circumstances present here, in combination – namely, (1) counsel for Defendants did

make three attempts to contact counsel for Plaintiffs on the day of the deadline, but counsel for Plaintiffs did not respond until very late in the afternoon and then proposed meeting and conferring the next day, (2) the 28-day deadline to file a motion under Rule 59(e) is jurisdictional, and (3) the primary relief sought by Defendants is complete dissolution of the injunction, which makes the Motion comparable to a potentially dispositive motion, which is not subject to the meet and confer requirement under D.C.COLO.LCivR 7.1A. The Court accordingly declines to deny the Motion on this ground.

2. Whether the Court Committed Legal Error by Issuing the Injunction

Defendants first argue that the Injunction was not warranted because the Court failed to adequately evaluate the governing factors from *Monsanto Co. v. Geertson Seed Farms*, 130 S. Ct. 2743, 2756 (2010), and in particular the requirement of irreparable harm. (ECF No. 95, at 5-7.) The Court disagrees. The Court carefully considered the *Monsanto* factors, applied them to the facts, and found the requisite irreparable harm. (ECF No. 94, at 49-50.) The Court did not clearly err in reaching this conclusion. Therefore, the Court denies the Motion as to this argument.

3. Further Steps in Completing EIS

Defendants also emphasize that they have completed significant new steps in working on an EIS, including creating a draft schedule for the EIS's completion. (ECF No. 95, at 7-10.) Defendants made similar arguments to the Court in their original Response brief, in which they argued that this action was prudentially moot because of Defendants' plan to create an EIS. The Court rejected those arguments, finding

numerous reasons why the action was not prudentially moot. (ECF No. 94, at 11-15.) Although the Court emphasized in its Order that Defendants had not even yet created a timetable for the completion of the EIS, the fact that a draft schedule has now been created does not change the Court's conclusion, given all the other reasons expressed by the Court for why the action was not prudentially moot.

4. Activities Necessary to Complete EIS

Defendants also seek clarification of the Court's Order regarding activities on ULMP lands that are necessary to complete the EIS. (ECF No. 95, at 10-12.) The Court recognizes that its injunction prohibiting "any activities on lands governed by the ULMP" is broad, and there is good cause to amend that portion of the Injunction. (ECF No. 94, at 52.) Therefore, as ordered below, the Injunction will be amended to allow those activities on ULMP lands that are absolutely necessary to conduct an environmental analysis on remand regarding the ULMP that fully complies with NEPA, ESA, all other governing statutes and regulations, and this Court's October 18, 2011 Opinion and Order. As proposed by Defendants, the Court will require Defendants "to provide notice to the Court and Plaintiffs . . . before any such activities beg[i]n . . . on the [ULMP] lands." (ECF No. 101, at 3.)

5. Activities Necessary to Comply With Orders From State Regulatory Agencies

Defendants also seek clarification regarding activities on ULMP lands that are necessary to comply with orders of government regulatory agencies. (ECF No. 95, at 14-15.) They point out that the Colorado Division of Reclamation, Mining and Safety has already ordered two lessees to prepare an Environmental Protection Plan, and that

activities on ULMP lands may be necessary to comply with that Order. Although this issue is to some degree not yet ripe, the Court finds good cause to modify the injunction to allow those activities on ULMP lands that are absolutely necessary to comply with an order from a federal, state, or local government regulatory agency. As to these actions also, the Court will require Defendants to provide notice to the Court and Plaintiffs before any such activities begin on ULMP lands.

6. Reclamation Activities

Defendants also contend that they should be allowed to conduct certain reclamation activities on the ULMP lands. While Defendants' Motion and supporting documents did not provide enough detail to the Court to adequately analyze this request, Defendants' Reply brief and the accompanying Declaration of Steven R. Schiesswohl does.

The Court finds good cause to amend the Injunction to allow certain reclamation activities on ULMP lands. Specifically, the Court will amend the injunction to allow those activities on ULMP lands that are absolutely necessary to remediate dangers to the public health, safety, and environment on ULMP lands caused by major storm events, acts of vandalism, or land subsistence. (See ECF No. 101-1, ¶ 6.) As to these actions, the Court will require Defendants to provide notice to the Court and Plaintiffs before any such activities begin, if possible. However, if an emergency situation prevents Defendants from providing such notice before such activities begin, Defendants shall provide notice to the Court and Plaintiffs of such response activities no later than seven days after the activities began.

The Court will also amend the injunction to allow those activities on ULMP lands

that are absolutely necessary to maintain access roads; maintain safety berms and stormwater run-off control berms associated with existing mine dumps and mine yard facilities; maintain security fences and gates to limit public access to potentially hazardous areas; conduct inspections of existing mines to maintain safe access to mine workings; conduct environmental sampling of existing monitoring wells, and air sampling of exhaust air from existing mines; perform weed control of non-native noxious weeds; perform vegetation control around existing mine portal and vent hole openings to minimize fire potential; or maintain and repair mine equipment at existing mine yard facilities. As to these actions, the Court will not require Defendants to provide notice before conducting such activities, but will require Defendants to provide Plaintiffs (but not the Court) with bi-monthly (every 60 days) summaries of such activities that have been conducted.

Defendants will not be allowed to close or gate open mine portals, close mine shafts, or close mine vents, unless ordered to do so by a federal, state, or local government regulatory agency.

III. CONCLUSION

In accordance with the foregoing, the Court ORDERS as follows:

- (1) This action is REOPENED for the limited purpose of ruling on Defendants' Motion for Reconsideration;
- (2) Defendants' Motion for Reconsideration (ECF No. 95) is GRANTED IN PART and DENIED IN PART;
- (3) Defendants' Motion for Reconsideration is GRANTED in so far as the Court's injunction will be amended to allow Defendants; other federal,

state, or local governmental agencies; and/or the lessees to conduct only those activities on ULMP lands that are absolutely necessary:

- (a) to conduct an environmental analysis regarding the ULMP that fully complies with NEPA, ESA, all other governing statutes and regulations, and this Court's October 18, 2011 Opinion and Order;
 - (b) to comply with orders from federal, state, or local government regulatory agencies;
 - (c) to remediate dangers to the public health, safety, and environment on ULMP lands caused by major storm events, acts of vandalism, or land subsistence; and
 - (d) to maintain access roads; maintain safety berms and stormwater run-off control berms associated with existing mine dumps and mine yard facilities; maintain security fences and gates to limit public access to potentially hazardous areas; conduct inspections of existing mines to maintain safe access to mine workings; conduct environmental sampling of existing monitoring wells, and air sampling of exhaust air from existing mines; perform weed control of non-native noxious weeds; perform vegetation control around existing mine portal and vent hole openings to minimize fire potential; or maintain and repair mine equipment at existing mine yard facilities.
- (4) In all other respects, Defendants' Motion for Reconsideration is DENIED;
- (5) As amended by this Order, this Court's ongoing injunction consists of the

following provisions:

- (a) Defendants' 2007 EA and FONSI are invalidated and have no further legal or practical effect;
- (b) The 31 leases currently in existence under the ULMP are stayed;
- (c) Defendants are enjoined from issuing any new leases on lands governed by the ULMP;
- (d) Defendants are enjoined from approving any activities on lands governed by the ULMP, including exploration, drilling, mining, and reclamation activities, except that Defendants; other federal, state, or local governmental agencies; and/or the lessees are allowed to conduct only those activities on ULMP lands that are absolutely necessary:
 - (i) to conduct an environmental analysis on remand regarding the ULMP that fully complies with NEPA, ESA, all other governing statutes and regulations, and this Court's October 18, 2011 Opinion and Order;
 - (ii) to comply with orders from federal, state, or local government regulatory agencies;
 - (iii) to remediate dangers to the public health, safety, and environment on ULMP lands caused by major storm events, acts of vandalism, or land subsistence; and
 - (iv) to maintain access roads; maintain safety berms and stormwater run-off control berms associated with existing

mine dumps and mine yard facilities; maintain security fences and gates to limit public access to potentially hazardous areas; conduct inspections of existing mines to maintain safe access to mine workings; conduct environmental sampling of existing monitoring wells, and air sampling of exhaust air from existing mines; perform weed control of non-native noxious weeds; perform vegetation control around existing mine portal and vent hole openings to minimize fire potential; or maintain and repair mine equipment at existing mine yard facilities.

- (e) If Defendants plan to conduct activities that are absolutely necessary to complete the EIS or to comply with orders from federal, state, or local government regulatory agencies, the Court orders Defendants to provide notice to the Court and Plaintiffs before any such activities begin;
- (f) If Defendants plan to conduct activities that are absolutely necessary to remediate dangers to the public health, safety, and environment on ULMP lands caused by major storm events, acts of vandalism, or land subsistence, the Court orders Defendants to provide notice to the Court and Plaintiffs before any such activities begin, if possible, but in any event shall be provided to the Court and Plaintiffs no later than seven days after such activities began;
- (g) If Defendants plan to conduct activities that are absolutely

necessary to maintain access roads; maintain safety berms and stormwater run-off control berms associated with existing mine dumps and mine yard facilities; maintain security fences and gates to limit public access to potentially hazardous areas; conduct inspections of existing mines to maintain safe access to mine workings; conduct environmental sampling of existing monitoring wells, and air sampling of exhaust air from existing mines; perform weed control of non-native noxious weeds; perform vegetation control around existing mine portal and vent hole openings to minimize fire potential; or maintain and repair mine equipment at existing mine yard facilities, the Court orders Defendants to provide Plaintiffs (but not the Court) with bi-monthly summaries of such activities that have been conducted;

- (h) After Defendants conduct an environmental analysis on remand that fully complies with NEPA, ESA, all other governing statutes and regulations, and this Court's October 18, 2011 Opinion and Order, Defendants may move the Court to dissolve this injunction;
- (6) If, at any point in the future, Plaintiffs or Defendants contemplate filing a motion for reconsideration under Federal Rule of Civil Procedure 60(b) (which the Court discourages), or Defendants contemplate filing a motion to dissolve the injunction following completion of their new environmental analysis, they shall first fully and meaningfully meet and confer with opposing counsel pursuant to D.C.COLO.LCivR 7.1A.

- (7) After entry of this Order, the Clerk of Court shall again administratively CLOSE this action, subject to the Court's continuing jurisdiction to enforce full compliance with this Order.

Dated this 27th day of February, 2012.

BY THE COURT:



William J. Martínez
United States District Judge

**U.S. Department of Energy Office of Legacy Management
Uranium Leasing Program (ULP)**

**Routine Maintenance Activities Performed by the ULP Lessees
(February 25, 2014, through April 24, 2014)**

During the above-referenced bi-monthly reporting period, the ULP lessee identified performed the various routine maintenance activities listed at one or more of their respective lease tracts (as noted), on one or more occasions:

Cotter Corporation:

- Check and run the ventilation fans on the surface to maintain airflow through the mine to reduce the effects of dry rot on the mine timbers (Lease Tracts C-JD-6, C-JD-7, C-JD-8, C-JD-9, and C-SM-18);
- Inspect the mine workings and perform mine maintenance activities if conditions warrant (Lease Tracts C-JD-6, C-JD-7, C-JD-8, C-SR-11, and C-SM-18);
- Do road maintenance to maintain access to lease tract operations (Lease Tracts C-JD-6, C-JD-7, C-JD-9, and C-SM-18);
- Check for and spray noxious weeds throughout the lease tract (Lease Tracts C-JD-6, C-JD-7, C-JD-8, C-JD-9, C-SR-11, C-SR-13A, C-SM-18, C-LP-21, and C-CM-25);
- Check the lysimeters for water results (Lease Tracts C-JD-6, C-JD-8, C-JD-9, and C-SM-18);
- Check the water level in the mine (Lease Tracts C-JD-7 and C-JD-9);
- Check and maintain storm-water run-off control facilities, including the berms, ditches, and catchment ponds (Lease Tracts C-JD-7, C-JD-9, C-SR-11, C-SR-13A, C-SM-18, C-LP-21, and C-CM-25);
- Check the mine-portal access areas and the mine buildings for unauthorized entry (Lease Tracts C-JD-7, C-JD-9, and C-SR-11);
- Check the open-pit for slope stability (Lease Tract C-JD-7);
- Perform maintenance work on some of the equipment as necessary (Lease Tract C-JD-7)
- Remove mine supplies from the mine building for use at other properties (Lease Tract C-JD-7);
- Check and run the emergency escape hoist on the surface (Lease Tract C-SM-18);
- Collect water samples from monitor well (Lease Tract C-JD-9); and
- Check the portal, secondary escapeway, and venthole for security purposes (Lease Tract C-SR-13A).

The three remaining lessees: Energy Fuels Resources, including wholly owned subsidiary Colorado Plateau partners; Gold Eagle Mining, Inc.; and Golden Eagle Uranium did not perform any activities on their respective lease tracts.