INFORM

INFORMATION NETWORK FOR
RESPONSIBLE MINING

PO Box 27
NORWOOD, CO 81423

(970) 497-4482
JENNIFER@INFORMCOLORADO.ORG
WWW.INFORMCOLORADO.ORG

April 14, 2015

Russ Means
Colorado Division of Reclamation, Mining and Safety
101 S. 3rd Street, Suite 301
Grand Junction, Colorado 81501

Via email to Russ.Means@state.co.us

Re: Comments on LP-21 Mine, Permit No. M-1977-305

Dear Mr. Means,

The Information Network for Responsible Mining is concerned with the ongoing situation regarding the LP-21 Mine, Permit No. M-1977-305, operated by the Cotter Corporation, in western Montrose County. Over the years, INFORM has exercised its rights as an interested party in the Division's reviews of the LP-21 Mine, most recently filing an objection to the 2012 permit amendment application (to implement an Environmental Protection Plan) and to the Dec. 15, 2012, Notice of Temporary Cessation. INFORM writes today to complain over the accuracy of Cotter Corporation's most recent annual report, posted online on March 26, 2015, as well as Cotter's failure to gain prior approval for its reclamation and surface water management activities. Additionally, the condition of the site overall is indicative of continuing neglect.

In the March 2015 annual report for the LP-21 Mine, Cotter Corporation states that the date of last activity occurred at the site in August 2003 and fails to mention the stormwater control and flood repair work that was performed in November 2014. The LP-21 Mine is part of the Energy Department's Uranium Lease Management Program and is subject to a Feb. 27, 2012, federal court injunction that prohibits Cotter Corporation from conducting any active mining activities other than those which 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."[1] In addition, the court requires that any activities meeting those

[1] See enclosed Department of Energy letter to Cotter Corporation, April 25, 2012; and U.S. District Court Amended Order, Feb. 27, 2012.

terms be reported to the court and plaintiffs by the Department of Energy at least seven days in advance. Cotter did not provide notice to the Department of Energy, thereby causing DOE to violate the terms of the federal court order by failing to report the flood damage and provide advance notice of the cleanup work. Further, the Colorado Mined Land Reclamation Act at §34-32-116(3) also requires the annual reporting of "all reclamation accomplished to date and during the preceding year." In its Dec. 15, 2012, notice of temporary cessation, Cotter stated that, "Interim surveillance and maintenance will be conducted to keep the associated stormwater management controls working effectively as described in the recently submitted Environmental Protection Plan."[2] Cotter's failure to follow explicit directives demonstrates its continuing failure to act in accordance with the terms of its lease with the Department of Energy, as limited by the current injunction, and its mine permit with the Division.

In the Division's Dec. 13, 2012, rationale to approve the Environmental Protection Plan amendment, an updated drainage design plan was approved for the site with a statement that the implementation of stormwater control improvements would occur upon reopening of the mine.[3] In other words, during the continued state of idleness that is elongated by the current official status of temporary cessation, the Division approved the EPP as if nothing has been done to degrade or improve the protective measures of the site. Unfortunately, when the site was flooded sometime in November 2014, material was washed from disturbed areas across the site. Cotter appears to have performed the cleanup work and provided cursory repair of the failed surface water controls at the site without seeking Division review or approval or following the required procedure under the court order or Colorado law. Later inquiry confirms that a barrier rock had been moved and replaced from the Long Park No. 12 shaft, the Guadalcanal shaft had subsided several feet and was filled with flood material then covered with two barrier rocks, and that storm water had moved across the site, requiring the excavation of a ditch area to channel storm water in the future.[4] The fact that the site has experienced such a major failure of stormwater controls conclusively undermines the Division's determination in the EPP to allow Cotter to defer any stormwater management features. It is now clear that even a routine precipitation event causes the disturbance of toxic materials to be released from the site. The continuing failure to immediately implement all measures of the approved Environmental Protection Plan at this and other uranium mines is placing the environment and public health at risk, as evidenced not only by the flood at LP-21 but at mines in Big Gyp, Slick Rock and Davis Mesa over the previous two summers as well.

The degraded LP-21 site and inadequate control of water discharges was confirmed during the review process for the EPP amendment, where the Division raised in several adequacy

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[2] See Cotter Corporation Notice of Temporary Cessation, dated Dec. 13, 2012, in permit file at http://drmsweblink.state.co.us/drmsweblink/0/doc/972849/Electronic.aspx?searchid=25536afc-160b-4648-a4a7-b7be72829ba9

[3] See Division response to item no. 11, pp. 4-5, Rationale for Recommendation to Approve a 112-d Amendment Application Over Objections, Sept. 16, 2013, available in permit file at http://drmsweblink.state.co.us/drmsweblink/0/doc/1001077/Electronic.aspx?searchid=25536afc-160b-4648-a4a7-b7be72829ba9

[4] See enclosed Supplemental Notice of Necessary Remediation Activities filed by Department of Energy to the U.S. District Court, Dec. 8, 2014, and Declaration of Russell Edge filed by Department of Energy to the U.S. District Court, Dec. 8, 2014.

reviews the question of whether Cotter had correctly characterized the existing vegetative cover and whether it had incorrectly calculated the stormwater patterns at the site, specifically questioning which Curve Number (CN) to use.[5] Cotter did not review the calculations, as the Division had requested in the adequacy reviews. It appears that the calculations were not amended and Cotter's position as stated in the final adequacy response was accepted. Based on the conditions of the site that were documented in a Department of Energy inspection on Dec. 3, 2015, and subsequent follow-up communications between Cotter and DOE that the Division appears not to have been included in, more information about stormwater flows is available to the Division to determine whether the drainage design plan as approved will, in fact, be adequate to protect the environment, should Cotter ever fully come around to implementing those requirements. Now that it is spring, the Division should conduct its own detailed inspection of the LP-21 Mine and review the existing conditions of the site in order to enforce the requirements of Rule 3.1.6(2), which says that "all surface areas of the affected land, including spoil piles, shall be stabilized and protected so as to effectively control erosion."

On March 30, 2015, Cotter Corporation informed the Division that it planned to replace the existing financial warranty for the LP-21 Mine with a required warranty $7,800 lower than the current bond, of which all but $100 is held by the Department of Energy.[6] This reduction in the financial warranty for the LP-21 Mine should not be considered or allowed until the site is improved and the interest of the taxpayers are fully protected.

Photos taken at the site on April 5, 2015, indicate the lack of effective interim reclamation and the usual state of longterm indifference from its operator -- conditions that are unacceptable and inappropriate, yet unfortunately exactly what can be expected from a mine that has been allowed by the Division to sit idle without production since the 1970s.

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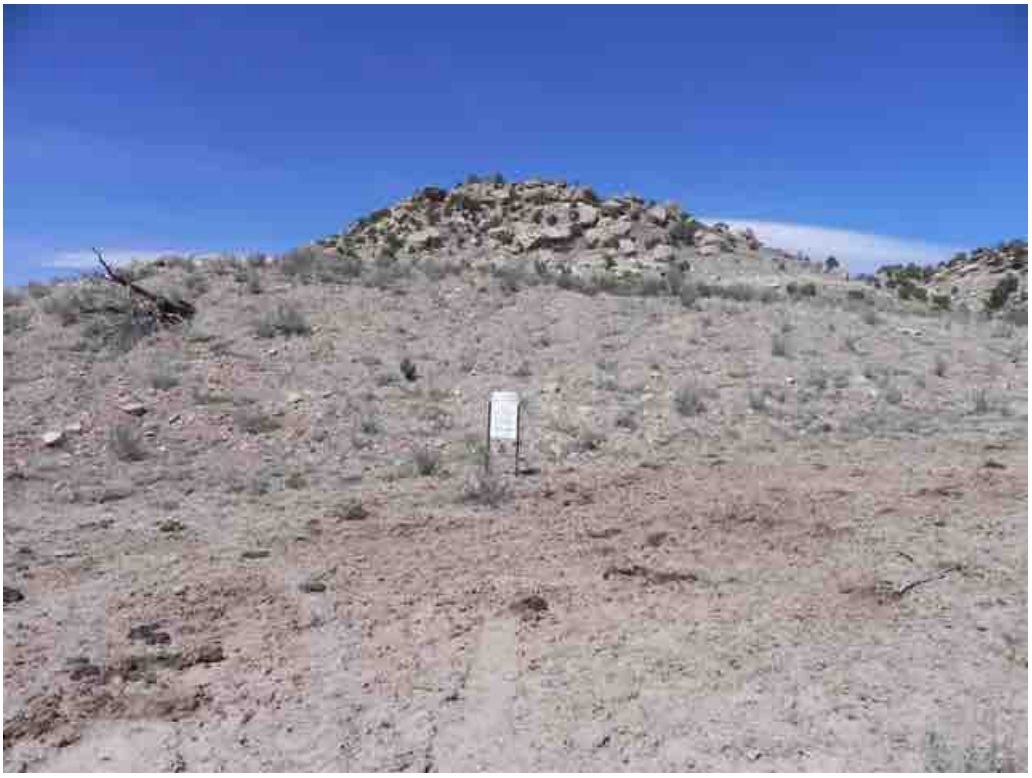
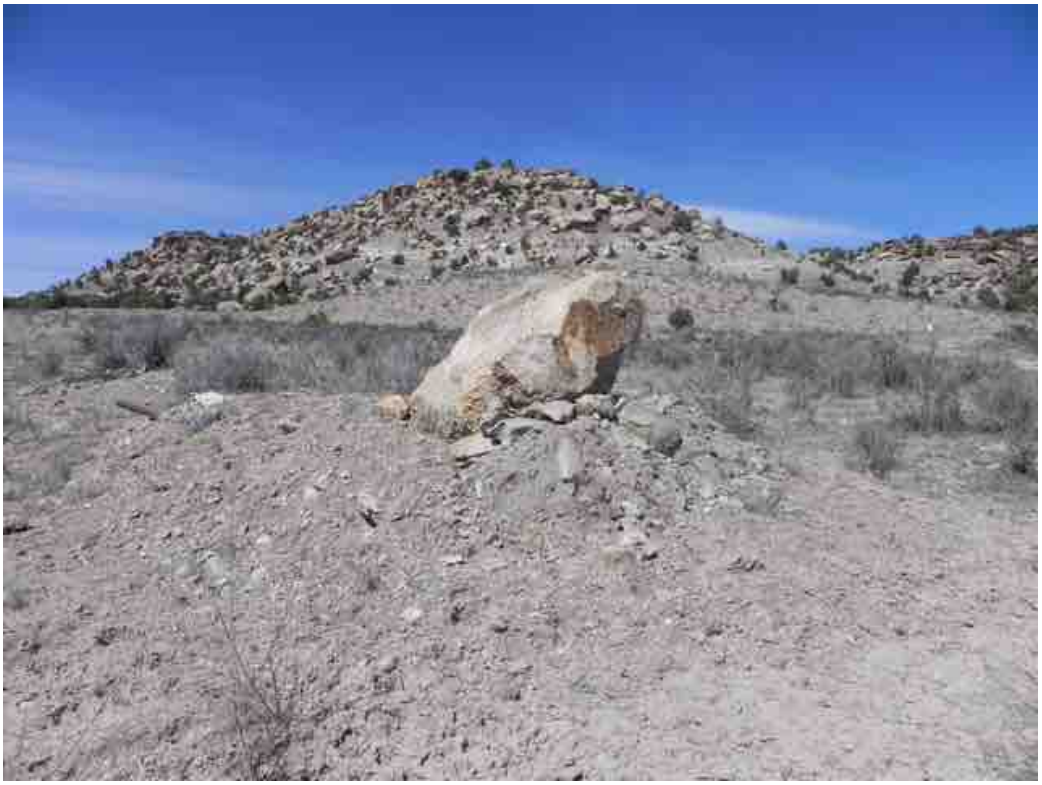
[5] See discussion in Cotter's Response to Adequacy Review 5, June 28, 2013, at p. 1, available in permit file at http://drmsweblink.state.co.us/drmsweblink/0/doc/995219/Electronic.aspx?searchid=07c5e623-5cb3-4257-a406-a21c5cf5fabd and Cotter's Response to Adequacy Review 4, June 19, 2013, pp. 2-4, 8 available in permit file at http://drmsweblink.state.co.us/drmsweblink/DocView.aspx?id=991328&page=1&&dbid=0. See Division discussion in June 28, 2013, Memorandum from Tim Cazier to Dustin Czapla, available in permit file at http://drmsweblink.state.co.us/drmsweblink/0/doc/992674/Electronic.aspx?searchid=5ee51f9a-7e17-4c1d-bb17-f5360867987b; and General Stormwater Comments, April 9, 2013, available in permit file at http://drmsweblink.state.co.us/drmsweblink/0/doc/981207/Electronic.aspx?searchid=5ee51f9a-7e17-4c1d-bb17-f5360867987b

[6] See Cotter Corporation Response to Warranty Audit Letter, March 30, 2015, available in permit file at http://drmsweblink.state.co.us/drmsweblink/0/doc/1065090/Electronic.aspx?searchid=5ee51f9a-7e17-4c1d-bb17-f5360867987b

The area below the waste pile shows signs of disturbance from storm water flow:

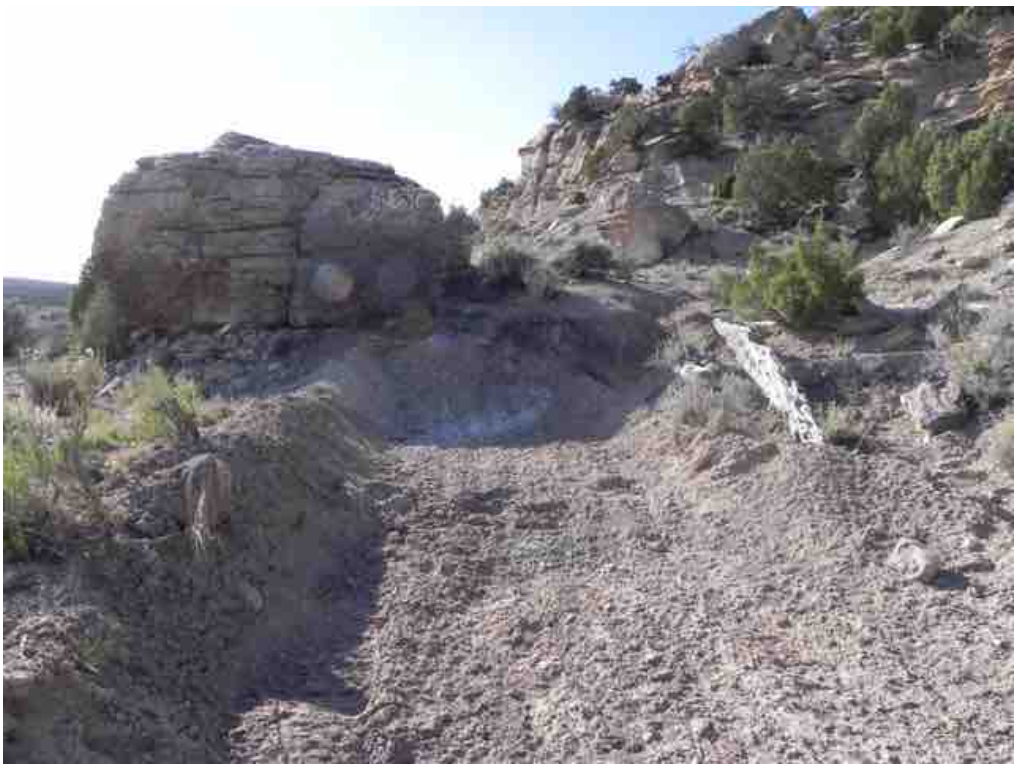


The Long Park No. 12 shaft with a small boulder placed on top:

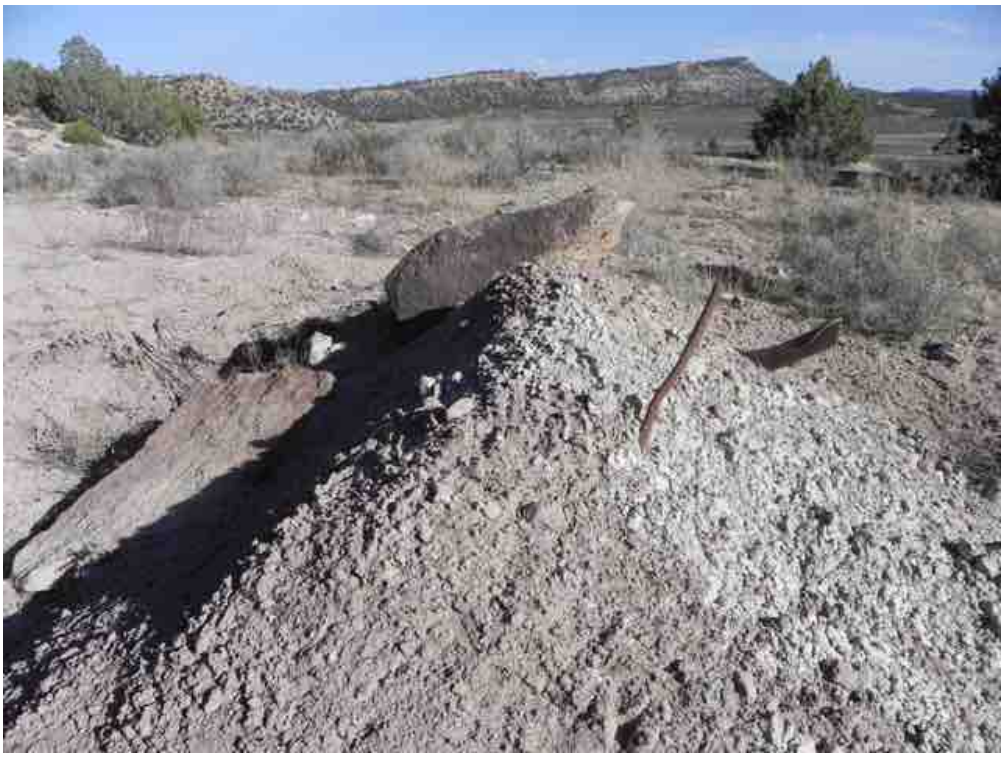


Open hole in disturbed area approximately halfway between waste pile and Guadalcanal shaft:

Area at Guadalcanal site where flood material was excavated:



Subsided Guadalcanal shaft that was backfilled, with the two replaced barrier rocks that had washed off during the flood:



A camp site in close proximity to waste piles is in use by recreationists at the mine, complete with fire ring and sculpture made from scavenged mine relics:

The conditions at Cotter's LP-21 Mine continue to reflect a general state of disuse and neglect and fail to protect the environment and public health. The Division's attention and concern in this matter are expected and appreciated.

Sincerely,

Jennifer Thurston
Director
INFORM

Cc: Tony Waldron, DRMS
Ginny Brannon, DRMS

epartment of Energy
Washington, DC 20585

APR 2 5 2012

Mr. Glen Williams
Manager
Cotter Corporation
Western Slope Operations
P.O. Box 700
Nucia, CO 81424

Dear Mr. Williams:

The purpose of this letter is to ensure that the Department of Energy (DOE) and the lessees in DOE's Uranium Leasing Program (ULP) comply with the U.S. District Court's February 27, 2012 "Order Granting in Part and Denying in Part Defendants' Motion for Reconsideration" in Colorado Environmental Coalition v. Office of Legacy Management, Civil Action No. 08-cv-01624 (D. Colo.). A copy of that Order is enclosed.

In that Order, the court narrowed the injunction that it had issued in its earlier Order of October 18, 2011. The court amended its injunction 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" in four specific categories of activities that are identified in the February 27, 2012 Order at Paragraphs (5) (d) (i) through (iv) (on pages 9-10); and only if DOE provides, for each of those four categories of activities, certain specific notices to the court and to Plaintiffs that are identified in the Order at Paragraphs (5) (e) through (g) (on pages 10-11).

In order to comply with the court's Order that DOE provide the required notices to the court and Plaintiffs before any such activities begin (except in the case of those emergencies and specific maintenance activities identified in the Order at Paragraphs 5 (f) and (g)), it is necessary that the ULP lessees (1) provide advance notice to DOE of all such activities before those activities begin; and then (2) not engage in any such activities until after DOE has informed the lessees that DOE has provided the required notice to the court and Plaintiffs pursuant to the February 27, 2012 Order. In order to ensure compliance with the court's Order, DOE further requests that other non-DOE federal, state, and local governmental agencies issuing directions regarding activities on ULP lands provide DOE notice of any such directions. DOE will make every effort to inform the lessees as quickly as possible that it has provided the required advance notice of the activities to the court and Plaintiffs so that the activities may then proceed.

In the case of those emergencies that are identified in the Order at Paragraph 5 (f) – 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" – the court ordered DOE to provide notice to the court and Plaintiffs before any such activities begin, if possible, but in any event no later than seven days after such activities began. Therefore, if it is not possible for the lessees and agencies to provide advance notice to DOE of those emergency

activities (as requested in the preceding paragraph of this letter), it will be necessary that the lessees and agencies provide notice to DOE of all such emergency activities within two days after such activities began, so that DOE will be able to provide the required notice to the court and Plaintiffs within seven days after such activities began.

In addition, in the case of those specific maintenance activities that are identified in the Order at Paragraph 5(g) and that are absolutely necessary, the court ordered DOE to provide Plaintiffs with bi-monthly summaries of such activities that have been conducted. For those specific maintenance activities that the lessees consider to be absolutely necessary, DOE directs the lessees to provide notification and a detailed description to DOE before they begin any of those maintenance activities (except those activities that qualify as emergencies); DOE will then inform the lessees whether the agency agrees that those activities are permitted by Paragraph 5(g), so that the lessees will then be able to begin those activities in compliance with the Order. This process is necessary in order to ensure that before DOE provides the required bi-monthly summaries of activities to the Plaintiffs, DOE will have already confirmed that those activities are permitted by the Order. After the lessees provide notification and a detailed description of those routine maintenance activities to DOE, DOE will make every effort to inform the lessees, within two working days, whether the agency agrees that those activities are permitted by Paragraph 5(g).

In all of the cases described above, lessee notification should be made to DOE in writing by electronic e-mail to the following address:

LMULPNOTICE@hq.doe.gov

If the activities involve directions issued by non-DOE federal, state, or local governmental agencies, copies of those directions should be scanned and sent as e-mail attachments to the e-mail address listed above.

Thank you for your cooperation in this matter. Please contact Laura Kilpatrick at 720-880-4338 with any questions.

Sincerely,

Thomas C. Pauling
Director of Site Operations
Office of Legacy Management

cc: Suzanne Bohan, USEPA
Teresa Pfifer, BLM
Russ Means, CDRMS
Steve Tarlton, CDPHE

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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

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

COLORADO ENVIRONMENTAL COALITION;
INFORMATION NETWORK FOR RESPONSIBLE MINING;
CENTER FOR NATIVE ECOSYTEMS;
CENTER FOR BIOLOGICAL DIVERSITY;
SHEEP MOUNTAIN ALLIANCE;

Plaintiffs,

v.

OFFICE OF LEGACY MANAGEMENT;
UNITED STATES DEPARTMENT OF ENERGY;

Federal Defendants

SUPPLEMENTAL NOTICE OF NECESSARY REMEDIATION ACTIVTIES

Federal Defendants respectfully submit this Supplemental Notice of necessary remediation activities on two legacy mines sites associated with the Uranium Lease Management Program ("ULP") pursuant to Paragraph 5(f) of this Court's February 27, 2012 Order. *See* ECF No. 102 ¶ 5(f). This Notice supplements the Preliminary Notice of Necessary Remediation Activities previously filed with this Court on December 5, 2014. ECF No. 112.

On November 20, 2014, Cotter Corporation, a lessee on the ULP lease tracts, performed necessary remediation activities on two legacy mines sites on tract number C-LP-21. *See* Declaration of Russel Edge filed herewith ("Edge Decl."), ¶¶ 7-10. The Department of Energy ("DOE") did not learn until December 2, 2014 that Cotter

Corporation had performed those necessary remediation activities on the two mine sites. *See id*. ¶¶ 5-6.

FACTUAL BACKGROUND

On December 2, 2014, a representative of the Bureau of Land Management ("BLM") spoke with a DOE contractor employee. The BLM representative conveyed that he noticed that some earth-moving work had recently been performed at two of the mine sites on lease tract C-LP-21. *Id.* ¶ 5. Based on photographs and a map sent to DOE subsequent to that conversation, DOE determined that ground-disturbing activity had occurred on the Guadalcanal and Long Park No. 12 mine sites. Both mine sites were legacy mine sites and Cotter Corporation is the lessee on both sites. *Id.*

Upon learning of these activities, DOE emailed the President of Cotter Corporation about the disturbance and inspected the respective mine sites with a company representative on December 3, 2014. Cotter Corporation represented that it had been on lease tract C-LP-21 on November 19, 2014 to inspect the mines on the lease and to perform maintenance on the storm water drainage system if necessary. *Id.* ¶¶ 6-7. At the Guadalcanal mine site on this lease tract, Cotter Corporation discovered on November 19 that a recent storm event had caused a considerable amount of sediment to come down the natural drainage located on the northwest side of the mine site, which filled the diversion channel and caused stormwater to flow across the reclaimed mine shaft. *Id.* The stormwater saturated the soil that served as backfill in the shaft area and caused it to subside two to three feet over an area of approximately 10 feet diameter. Cotter Corporation considered this to be a potential safety and environmental danger that needed

to be addressed because the stormwater flowing across the mine shaft, and the subsidence of the shaft area, constituted environmental damage to the mine site and would have posed a safety threat to any person who might have walked across the mine site. *Id*. ¶ 8. Cotter Corporation represented to DOE that, on November 20, 2014, it: (1) excavated sediment out of the approximately 8-foot wide and 65-foot long diversion channel; (2) used this sediment to refill the subsided mine shaft back to approximately 3 feet above the natural ground surface; and (3) placed two large rocks on top of the mounded material to preclude vehicular access to the site and to preclude other activity from occurring directly over the shaft site. Cotter Corporation did no other work on this mine site. *See id*. ¶ 9.

Cotter Corporation further informed DOE that, while performing this emergency work on November 20, it observed that the boulder that it had previously placed on top of the reclaimed Long Park No. 12 mine site had been dislodged. *See id*. at ¶ 10. The purpose of the boulder is to preclude activity directly on top of the Long Park No. 12 mine. *See id.* The displacement of the boulder was a danger to safety and the environment because the displaced boulder no longer precluded vehicular access and other activity from occurring directly over the shaft. *See id*. Because Cotter Corporation had the heavy equipment necessary to place the boulder back in place, it did so at that time. Cotter Corporation did no other work on this mine site. *See id*.

THE PATH FORWARD

DOE previously apprised all ULP lessees, including Cotter Corporation, that they must promptly inform DOE of all activities on the ULP. Of particular relevance here, on

April 25, 2012, DOE sent a letter to Cotter Corporation informing the company that it was required to notify DOE of any emergency remediation activities on the ULP within two days to ensure that DOE provided the Court and Plaintiffs with timely notice under Paragraph 5(f) of the Court's February 27, 2012 Order. (*See* letter from Thomas C. Pauling, LM's Director of Site Operations, to Glen Williams, Manager, Cotter Corp., Western Slope Operations at paragraph 4, which is included with the similarly worded letters to the other ULP lessees, in Decl. Exhibit A.). Here, Cotter Corporation failed to provide DOE with timely notice of the remediation activities on the Guadalcanal and Long Park No. 12 mine sites. Cotter Corporation has explained to DOE that its failure to provide DOE with notice is due to the retirement of the former manager on the site. *See* Edge Decl. ¶ 4. To avoid this issue recurring, DOE will send new letters to the current management of all the ULP lessees reminding them of their obligation to provide timely notice to DOE of all the activities covered by the Order. *See id.*

RESPECTFULLY SUBMITTED this 8th day of December 2014

SAM HIRSCH
Acting Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

/s/ *Marissa Piropato*
MARISSA PIROPATO
Trial Attorney (MA Bar #651630)
United States Department of Justice
Environment and Natural Resources Division
Natural Resources Section
P.O. Box 663
Washington, D.C. 20044-0663
Telephone: (202) 305-0470
Facsimile: (202) 305-0506
marissa.piropato@usdoj.gov

ANDREW A. SMITH
Senior Trial Attorney (NM Bar #8341)
United States Department of Justice
Environment and Natural Resources Division
c/o U.S. Attorney's Office
P.O. Box 607
Albuquerque, New Mexico 87103
Telephone: (505) 224-1468
Facsimile: (505) 346-7205
andrew.smith6@usdoj.gov

JOHN H. MARTIN,
Trial Attorney (CO Bar #32667)
U.S. Department of Justice
Environment and Natural Resources Division
Wildlife and Marine Resources Section
999 18th Street, South Terrace, Ste. 370
Denver, CO 80202
Telephone: (303) 844-1383
Facsimile: (303) 844-1350 (
john.h.martin@usdoj.gov

Attorneys for Federal Defendants

Of Counsel:
STEPHEN DOVE
MONEKIA FRANKLIN
STEVEN MILLER
Office of General Counsel
United States Department of Energy

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

_/s/ *Marissa Piropato*
Marissa Piropato

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

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

COLORADO ENVIRONMENTAL COALITION;
INFORMATION NETWORK FOR RESPONSIBLE MINING;
CENTER FOR NATIVE ECOSYTEMS;
CENTER FOR BIOLOGICAL DIVERSITY;
SHEEP MOUNTAIN ALLIANCE;

Plaintiffs,

v.

OFFICE OF LEGACY MANAGEMENT;
UNITED STATES DEPARTMENT OF ENERGY

Defendants.

DECLARATION OF RUSSEL EDGE

1. I am currently employed as the Senior Advisor to the Director of Site Operations of the U.S. Department of Energy's (DOE) Office of Legacy Management (LM). I have responsibility for the oversight of the Uranium Leasing Program (ULP).[1] I also have responsibilities for the oversight of the Abandoned Uranium Mines project and the Title X Uranium and Thorium Reimbursement Program, as well as other duties as assigned to me.

2. The information in this declaration is either based upon my personal knowledge, or based upon information provided to me in my official capacity as an official at LM.

3. I am making this declaration in support of DOE's notice to the Court and Plaintiffs in the above-captioned proceeding pursuant to Ordering Paragraph 5(f) in the Court's Order dated February 27, 2012. See ECF No. 102, ¶¶ 5(d)(iii), 5(f). DOE is providing notice that one of the ULP lessees, Cotter Corp., conducted necessary remediation activities that were "absolutely

[1] DOE's ULP was known by a different name – the Uranium Lease Management Program (ULMP) – prior to 1994.

necessary to remediate dangers to the public health, safety, and environment." See id., ¶ 5(f). Cotter Corp. conducted these activities on two previously-reclaimed legacy mine sites on ULP lease tract C-LP-21: the Guadalcanal mine site, and the Long Park No. 12 mine site, both located in the southern portion of lease tract C-LP-21.

4. On December 2, 2014, DOE first learned that Cotter Corp. had performed these necessary remediation activities on the two mine sites. DOE had previously advised Cotter Corp. and all the other ULP lessees, by letters dated April 25, 2012, of the necessity to provide notice to DOE of all such emergency activities covered by the Order's Paragraph (5)(f) within two days after such activities began, so that DOE would be able to comply with the condition in the Court's Order that DOE provide notice to the Court and Plaintiffs no later than seven days after such activities began. See the fourth paragraph in the letter from Thomas C. Pauling, LM's Director of Site Operations, to Glen Williams, Manager, Cotter Corp., Western Slope Operations, which is also included in the similarly-worded letters to the other ULP lessees in Exhibit A hereto. Because Cotter Corp. failed to provide the agreed timely notice to DOE, DOE was unable to comply with the seven-day notice provision in the Court's Order. A recent change in Cotter Corp.'s personnel – the retirement from Cotter Corp. of Glen Williams, who had received DOE's April 25, 2012 letter on behalf of Cotter Corp. – appears to have been the principal cause of its failure to provide timely notice to DOE in this instance. To avoid a recurrence of this problem, DOE is now preparing letters that will re-notify the current management of all of the ULP lessees of the lessees' obligations to provide timely notice to DOE of all the activities covered by the Order.

5. Specifically, Mr. Ed Cotter – who is an employee of LM's contractor SM Stoller Corp., the prime contractor responsible for the ULP – listened on December 1, 2014, to a voice

mail message, concerning an issue on lease tract C-LP-21, that had been left for him by Barney Buria, an employee of the U.S. Bureau of Land Management's (BLM) Uncompahgre Field Office in Colorado. (Mr. Ed Cotter is no relation to anyone at Cotter Corp.) Mr. Cotter attempted to contact Mr. Buria, but was not able to speak with him until December 2, 2014. In that conversation, Mr. Buria said that he had noticed that some earth-moving work had been done recently at two of the mine sites on lease tract C-LP-21. Mr. Buria e-mailed photographs and a map to Mr. Cotter that morning. Based on this information, Mr. Cotter determined that the mines were the Guadalcanal and Long Park No. 12 mine sites.

6. Immediately after he identified the mines on December 2, Mr. Cotter sent an e-mail to Ken Mushinski, the President of Cotter Corp., in which Mr. Cotter asked if Cotter Corp. personnel had performed the work, and if so, when and why they did so. Mr. Mushinski responded later that afternoon, and advised Mr. Cotter that Cotter Corp. personnel had performed the work as part of its regular monthly inspection activities at the Long Park area mines. Later on December 2, Mr. Cotter sent an e-mail to me and to David Shafer – who is LM's Asset Management Team Lead in Westminster, Colorado – in which he advised us of what he had learned. Mr. Shafer spoke to Mr. Cotter later that evening. Mr. Cotter had already made arrangements to visit the sites with Cotter Corp. personnel the next morning. Mr. Shafer sent an e-mail to me, to the LM Director of Site Operations, and to attorneys in DOE's Office of General Counsel, in which he described the situation.

7. On December 3, 2014, Mr. Cotter met with Scott Potteroff of Cotter Corp. to look at the two mine sites and discuss the chronology of the work performed at them. According to

Cotter Corp. personnel, they were visiting the lease tract on November 19, 2014, to inspect the mines on the lease and to perform maintenance on the storm water drainage system if necessary.[2]

8. Cotter Corp. represented to DOE that on November 19, 2014, its personnel visited several mines at which no work was required. However, at the Guadalcanal mine site, they discovered that a recent storm event had caused a considerable amount of sediment to come down the natural drainage located on the northwest side of the mine site. This drainage had been diverted around the mine site when it was reclaimed. The sediment had filled the diversion channel and caused stormwater to flow across the reclaimed mine shaft. The water had saturated the soil that had been used to backfill the shaft area and caused it to subside two to three feet over an area of approximately 10 feet diameter. The Cotter Corp. personnel considered this to be a potential safety and environmental danger that needed to be addressed, because the stormwater flowing across the mine shaft, and the subsidence of the shaft area, constituted environmental damage to the mine site and would have posed a safety threat to any person who might have walked across the mine site.

9. Cotter Corp. also represented to DOE that on the following day, November 20, 2014, its personnel, including Mr. Potteroff, returned to the Guadalcanal mine site with a front-end loader and proceeded to repair the various storm water run-off control facilities. Sediment was excavated out of the approximately 8-foot wide and 65-foot long diversion channel. Concurrently, the sediments excavated from the diversion channel were used to refill the

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[2] Such necessary routine maintenance activities are permitted by the Court's Order in Paragraph 5(d)(iv); Paragraph 5(g) provides that if Defendants plan to conduct any such activities, they must "provide Plaintiffs (but not the Court) with bi-monthly summaries of such activities that have been conducted." See ECF No. 102, ¶¶ 5(d)(iv), 5(g). In DOE's next bi-monthly summary of routine maintenance activities, for the period October 25, 2014, through December 24, 2014, DOE will report that Cotter Corp., on lease C-LP-21, performed the routine maintenance activities of checking and maintaining stormwater run-off control facilities, including berms and ditches; and of checking for noxious weeds throughout the lease tract.

subsided mine shaft back to approximately 3 feet above the natural ground surface. Two large rocks were then placed on top of the mounded material to preclude vehicular access to the site, and to preclude other activity from occurring directly over the shaft site. It is common practice to use large rocks to discourage vehicle traffic on reclaimed mines. This completed the work at the Guadalcanal mine site.

10. The access road to the Guadalcanal mine site goes directly past the other mine site at which work was done, the Long Park No. 12 mine site. Cotter Corp. had previously placed a large boulder on the reclaimed mine shaft to preclude activity directly on top of the Long Park No. 12 mine. Mr. Potteroff represented to DOE that while he was passing the Long Park No. 12 mine site on November 20, he noticed that the boulder had been pushed away. No ULP activity had been performed at this site during the year, and there would not have been any maintenance-related reason for displacement of the boulder. At this time it is unknown who moved the boulder. Except for the boulder being displaced, it did not appear that any other activities had occurred at the site. The displacement of the boulder was a danger to safety and the environment, because the displaced boulder no longer served the purpose of precluding vehicular access and other activity from occurring directly over the shaft site. Because the Cotter Corp. personnel, during their November 20, 2014 visit to the site, had the heavy equipment necessary to move the boulder back in place, they did so at that time. The disturbed area associated with this action was only approximately 10 feet by 10 feet. This completed the work at the Long Park No. 12 mine site.

11. Although the limited land disturbance described above was necessary at the two mine sites, neither site is close to the most sensitive features in the area. For example, these mine sites are located approximately 6.2 miles from the nearest point along the Dolores River to

for west-southwest, and 2.0 miles from the nearest point along the San Miguel River to the north-northeast. It is[illegible] the same zone as 5.8 miles from the nearest area of critical habitat for the Canadian lynx Gunnison in the south.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on December 8, 2014.

[illegible]
Senior Advisor to Director of Site Operations
Grantor Licensing Program Manager
Office of Legacy Management
U.S. Department of Energy