



COLORADO
Division of Reclamation,
Mining and Safety
Department of Natural Resources

1313 Sherman Street, Room 215
Denver, CO 80203

January 12, 2016

Mr. Miguel Hamarat
Climax Molybdenum Company
Henderson Mill
P.O. Box 68
Empire, CO 80438

**Re: Climax Molybdenum Company; Henderson Mine; Permit No. M-1977-342;
Financial Warranty Status Review**

Mr. Hamarat:

The Division of Reclamation, Mining and Safety (Division/DRMS) has reviewed the history and adequacy of the Henderson Mine financial warranty, per Rule 4.2.1(2), as part of the pending surety increase at the site. The various financial warranties held by the Division are discussed below.

The Division currently holds a financial warranty in the amount of \$28,502,700.00. Henderson has submitted an updated Closure Cost Estimate dated June 2015, Version 6.0, to the Division in the amount of \$56,142,434.00.

Corporate Surety

The Division currently holds a Corporate Surety, per Rule 4.3.3, in the amount of \$10,133,000.00. Henderson has stated the Corporate Surety portion of the financial warranty would be the primary financial warranty method used to increase the financial warranty amount, minus the current water rights deeds of trust amounts and letter of credit amount. Henderson may choose to use a different company to issue the surety.

Letter of Credit

The Division currently holds a Letter of Credit, per Rule 4.3.4, in the amount of \$221,051.00. This financial warranty is posted in accordance with Rules 4.1.2(7) and 4.1.2(8)(c). The Division required the Operator to post this warranty in an easily convertible financial warranty instrument to operate the necessary environmental facilities during the first few months following a potential bond forfeiture. During which time, the Division would be working toward obtaining payment on the corporate surety and on the foreclosure and sale of the water rights deeds of trust.



Henderson has stated they may elect to not renew the letter of credit as part of the pending financial warranty increase. The Division will require Henderson to post a portion of the financial warranty in cash or other easily convertible instruments to operate the necessary environmental facilities during the first few months following a potential bond forfeiture. The acceptable forms of financial warranties are Cash Bond (Rule 4.3.1), Irrevocable Letters of Credit (Rule 4.3.4) and Certificates of Deposit (Rule 4.3.5).

The Division recalculated the required easily convertible financial warranty in the amount of \$2,908,950.00. A copy of the estimate was sent to Henderson for review on November 24, 2015.

Henderson Water Rights

The Division currently holds Conditional Promissory Notes for the Use with Deed of Trusts, per Rule 4.9.1, for Henderson water rights in the amount of \$8,596,169.00. The Mined Land Reclamation Board (Board) accepted the Deeds of Trust to the Henderson Mill incidental water rights, the Skylark Ranch water rights and the Williams Fork pump station water rights during the May 11, 2005 Board hearing. The individual deeds of trust are discussed below:

Henderson Mill incidental water rights

The Henderson Mill incidental water rights Deed of Trust, dated October 15, 2002, valued the water rights at \$3,520,000.00. The Division accepted \$3,765,831.96, which is more than the value of the water rights. The Division does not have record of why more than the valued water rights amount was accepted by the Division. The Division will require Henderson to explain this discrepancy and update the financial warranty amount for the Henderson incidental water rights, if Henderson intends to maintain this portion of the financial warranty. Additionally, the Division does not have the original copies of the Deed of Trust or the Division Director signed Financial Warranty and Conditional Promissory Note form for the water rights on file. The Division will require Henderson to provide these documents, if Henderson intends to maintain this portion of the financial warranty. Alternatively, Henderson may elect to submit a different form of acceptable financial warranty to replace the Henderson Mill incidental water rights.

Henderson Mill Skylark Ranch water rights

The Henderson Mill Skylark Ranch water rights Deed of Trust, dated October 17, 2005, valued the water rights at \$4,935,000.00. The Division accepted \$2,686,064.35. The Division does not have the original copies of the Deed of Trust or the Division Director signed Financial Warranty and Conditional Promissory Note form for the water rights on file. The Division will require Henderson to provide these documents, if Henderson intends to maintain this portion of the financial warranty. Alternatively, Henderson may elect to submit a different form of acceptable financial warranty to replace the Henderson Mill Skylark Ranch water rights.

Williams Fork pump station

The Williams Fork pump station water rights Deed of Trust, dated October 15, 2002, valued the water rights at \$2,810,000.00. The Division accepted \$2,144,272.96. The Division does not have the original copies of the Deed of Trust or the Division Director signed Financial Warranty and Conditional Promissory Note form for the water rights on file. The Division will require Henderson to provide these documents, if Henderson intends to maintain this portion of the financial warranty. Alternatively, Henderson may elect to submit a different form of acceptable financial warranty to replace the Williams Fork pump station water rights.

Condition #2 of the May 11, 2005 Board Order required the Williams Fork pump station and pipeline to be insured and the Board named as an additional insured party, in accordance with Rule 4.9.3(c). The Division does not have proof of insurance since June 30, 2009. The Division will require Henderson provide proof of insurance for the Williams Fork pump station and pipeline and commit to providing proof of insurance with the annual report for the Henderson Mine, if Henderson intends to maintain this portion of the financial warranty.

The three (3) Financial Warranty and Conditional Promissory Notes for the water rights values for the above water rights equals the Board approved financial warranty value of \$8,596,169.

Climax Water Rights

The Division's file indicates Henderson submitted a Deed of Trust for water rights, per Rule 4.9.1, associated with the Climax Mine, dated January 13, 2006, valued at \$9,552,480.00. It appears the Division accepted the full appraised value of the Deed of Trust without the fifteen percent (15%) reduction in value as required by Rule 4.9.1(1). The Division files indicate the Deed of Trust was not approved by the Board as required by Rule 4.9.1(1) and Section 34-32-117(3)(b) C.R.S. Additionally, the Division does not have the original copies of the Deed of Trust or the Division Director signed Financial Warranty and Conditional Promissory Note form for the water rights on file. The Division will require Henderson to provide these documents, if Henderson intends to maintain this portion of the financial warranty. Alternatively, Henderson may elect to submit a different form of acceptable financial warranty to replace the Climax Mine water rights.

Due to the amount of time since the Board accepted the Deeds of Trust for water rights as part of the financial warranty. The Division will require Henderson to seek Board approval for the Deeds of Trust, per Rule 4.1(10), if Henderson intends to maintain these portions of the financial warranty. The requirements for a Financial Warranty Deed of Trust and Security Agreement are below for reference:

If Henderson intends to provide a Financial Warranty Deed of Trust and Security Agreement, the following requirements must be met per Rule 4.3.6 and 4.9:

Rule 4.3.6 Deeds of Trust and Security Agreements

A Deed of Trust or security agreement encumbering real or personal property and creating a first lien in favor of the State of Colorado.

Rule 4.9.1 General Provisions

- (1) The Board or Office may accept interest in real and personal property as Financial Warranties of not more than eighty five percent (85%) of the estimated value of such property.
- (2) Any person offering such Financial Warranty shall:
 - (a) Submit current information necessary to show clear title to the property and the current appraised value of such property. This information shall contain a completed appraisal in a form approved by the Board.
 - (b) Submit together with the Annual Report as required by Section 1.15 the following:
 - (i) an update by a qualified independent appraiser indicating any changes in property value;
 - (ii) a statement summarizing any circumstances which may affect the adequacy of the Deed if it is a Trust or security agreement; and
 - (iii) proof that there are no past-due property taxes.
- (3) The Board or Office may refuse to accept any Deed of Trust or security agreement if the property or equipment offered is necessary in the functioning of any Environmental Protection Facility at the site of the mining operation, or the approved Reclamation Plan.

Upon submittal and Division verification that the Financial Warranty meets the above requirements, Board approval is required to ensure compliance with the applicable Rules and previous Board Order of May 11, 2005 for acceptance.

Henderson must commit to comply with the requirements of Rule 4.9.1(2)(b) and provide the information with the annual report for the Henderson Mine.

Please be aware that due to the initial and annual permittee expenses of providing Title and Escrow services for clear title verification and Deed recording and providing a qualified independent appraiser, this type of financial warranty is currently not being used. The Financial Warranty Corporate Surety or Letter of Credit are more commonly used due to the services required for issuance and annual re-verification are provided in house by the issuing surety or financial institution.

Please respond to this letter within 60 days from the date of the letter.

If you have any questions, please contact me at (303) 866-3567 Ext. 8124.

Sincerely,



Peter S. Hays

Environmental Protection Specialist

Enclosures - May 11, 2005 Board Order, Deeds of Trust and Financial Warranty and Conditional Promissory Notes for the Henderson Mill incidental water rights, the Skylark Ranch water rights and the Williams Fork pump station water rights, 2009 Certificate of Insurance

Certified Mail No. 7014 0150 0000 9138 9134
Return Receipt Requested

Cc: Wally Erickson; DRMS
Tony Waldron; DRMS
Barbara Coria; DRMS
Michael Cunningham; DRMS
Tyler O'Donnell; DRMS
Stephanie Mitchell; DRMS