



Dedicated to protecting and improving the health and environment of the people of Colorado

December 29, 2016

Mr. Eric R. Jacobson  
Ouray Hydroelectric Plant  
PO Box 1385  
Ouray, Colorado 81427

RE: Citizen Complaint

Dear Mr. Jacobson:

The Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division (HMWMD), received your Citizen's Complaint, dated November 15, 2016 (Complaint). Your Complaint takes issue with the Idarado Mine's Treasury Tunnel discharge - from both water quantity and water quality perspectives. As you know, the Division of Water Resources (DWR) within the Colorado Department of Natural Resources (DNR) administers in-state water rights, and HMWMD has no regulatory authority to address the water quantity matters raised in your Complaint. Moreover, on December 2, 2016, DNR's Division of Reclamation and Mine Safety (DRMS) responded to your Complaint stating DWR previously addressed the quantity issues in correspondence dated November 19, 2015. As such, this response only addresses water quality issues.

HMWMD understands your position to be discharges from the Treasury Tunnel and associated seeps must be permitted by the State and treated before reaching Red Mountain Creek. While HMWMD agrees these discharges are subject to regulation under Colorado's Water Quality Control Act (WQCA), the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) dictates an atypical approach to regulating surface water discharges at superfund sites. CERCLA § 121(e) exempts potentially responsible parties (PRPs) from obtaining permits for on-site remedial activities. While CERCLA exempts PRPs from the *administrative* aspects of permitting, PRPs must still comply with the *substantive* aspects of relevant environmental regulations. For point source discharges to surface water from remedial treatment systems within a superfund site, PRPs are generally required to achieve remedial action goals. These goals are typically defined by Colorado's water quality regulations and enforced through a "permit equivalent document" (PED). In other words, the PED serves as the functional equivalent of a CDPS permit, catered to the CERCLA regulatory framework governing superfund cleanups.

Pursuant to the 1992 Consent Decree and Remedial Action Plan (CD/RAP), Idarado is working with HMWMD to further reduce zinc loading to meet the Red Mountain Creek water quality performance objective.<sup>1</sup> Since the performance objective was not met during the compliance determination period, Idarado is required to identify other zinc loading sources and submit a proposal to HMWMD for additional remedial activities at Red Mountain Creek. *See* RAP at ¶ 50. Idarado submitted a *Remedial Alternatives Report* on December 31, 2013, identifying those sources, and is currently working on a proposal to address Treasury Tunnel discharges using a passive water treatment system. Discharges from

<sup>1</sup> The CD/RAP performance objective for Red Mountain Creek is based on a dissolved zinc concentration measured below Red Mountain Tailings Pile 4. *See* RAP at ¶ 49.



this or any other treatment system will be subject to substantive requirements of the WQCA regulations under a PED issued by HMWMD.

The CD/RAP process described above complies with CERCLA, WQCA, and the CD/RAP and will further reduce metals concentrations in Red Mountain Creek through PED discharge limits. I hope this explanation adequately addresses your concerns. If not, please contact me at (303) 692-3404 or [doug.jamison@state.co.us](mailto:doug.jamison@state.co.us) to further discuss.

Sincerely,



Doug Jamison  
CDPHE-HMWMD  
Superfund and Brownfields Unit Leader

cc: Camille Price & Wendy Naugle, CDPHE-HMWMD  
Kathy Rosow, CDPHE-WQCD  
Russ Means, DNR-DRMS  
Jason King, AGO  
Nick Cotts & Larry Fiske, Newmont Mining Company  
Denise Kennedy, Holland & Hart  
Jean Wyatt, USEPA

