



COLORADO

Division of Reclamation,
Mining and Safety

Department of Natural Resources

1313 Sherman Street, Room 215
Denver, Colorado 80203

January 11, 2017

Notice to Parties and Interested Persons to the Cresson Project Amendment 11 Permit Application

Re: Notice of Extension of Decision Date, Rescheduled Pre-hearing Conference, and Rescheduled Formal Board Hearing, Amendment No. 11 (AM-11) Application for the Cresson Project, Permit No. M-1980-244

Dear Party and/or Interested Person:

In a previous notice from the Division of Reclamation, Mining and Safety (Division), dated December 23, 2016, you were informed of the amendment application for the Cresson Project was filed with the Division on December 17, 2015 by the Cripple Creek & Victor Gold Mining Company (Applicant). In that correspondence, you were informed of the dates of the Pre-hearing Conference, the Formal Board Hearing, and the close of the review period whereby the Division will render its recommendation on the application. Please be advised that the applicant has requested an extension of the Division's review period in accordance with Rule 1.4.1(9). This gives Division staff a new deadline of February 2, 2017 to make a recommendation on the application. Please also be advised that the dates of the Formal Board Hearing and Pre-hearing Conference have changed, as clarified below.

Herein, references to the Act and Rules refer to the Colorado Land Reclamation Act 34-32-101 *et seq.*, C. R.S. (the Act) and the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal, and Designated Mining Operations (Rules), which can be accessed through the Division's website, <http://mining.state.co.us>.

The Division has received timely written objections to the application. Therefore, pursuant to Rules 1.4.9(2)(a) and 1.7.4(2), the Division has scheduled the application for a Formal Board Hearing for consideration. The hearing has been rescheduled for the **February 22-23, 2017** Board meeting, which will occur at 1313 Sherman Street, Room 318, Denver, Colorado, beginning at 9:00 a.m. or as soon thereafter as the matter can be considered. During the hearing, the Board will consider the amendment application with objections and may decide to approve, approve with conditions, or deny the application for the Cresson Project.

Pursuant to Rule 2.7.1, the Division is required to schedule a Pre-hearing Conference to occur prior to the Board hearing. The purpose of the Pre-hearing Conference is to describe the Division's review process, to explain the rights and responsibilities of parties, to discuss and resolve issues to the extent possible, to describe the Board Hearing processes, to propose a list of issues under the Board's jurisdiction, to simplify that list, and to identify parties. The Pre-hearing Conference has been rescheduled for February 8, 2017 at 1:00 pm to be held at the Cripple Creek Heritage Center. It is strongly recommended that you review the enclosed Rule 2.6 – *Pre-hearing Procedures – Motions, Witness and Exhibit Lists* and Rule 2.7 – *Pre-hearing Conferences* in preparation for the Pre-hearing Conference. Please note that, at the Pre-hearing Conference, you must provide the Division and all other



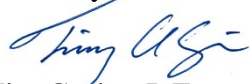
parties to the Hearing with a written list of all potential witnesses and exhibits that you may use at the Formal Board Hearing. The Division estimates that each party must bring a minimum of 150 copies of their list of potential witnesses and exhibits to the Pre-hearing Conference for distribution to all other parties.

Pursuant to Rule 2.7.3(4), any party who does not attend the Pre-hearing Conference forfeits its party status and all associated rights and privileges, unless such party provides a fully executed proxy authorization form to the Pre-hearing Conference Officer, and the party's authorized representative is present. An official proxy authorization form was provided with the materials accompanying the previous notice from the Division. Additional copies of the official proxy authorization form may be procured through the Division's website at <http://mining.state.co.us>.

Pursuant to Rule 1.4.9(2)(c), on or before February 2, 2017, the Division shall issue its recommendation to the Board for approval, approval with conditions, or denial of the application. Copy of the Division's recommendation will be forwarded to all parties and interested persons at least three (3) working days prior to the Pre-hearing Conference.

If you have any questions, you may contact me at the Division of Reclamation, Mining and Safety at 1313 Sherman Street, Room 215, Denver, CO 80203, by telephone at 303-866-3567, ext. 8169, or by email at tim.cazier@state.co.us.

Sincerely,



Tim Cazier, P.E.

Environmental Protection Specialist

Attachment: CERTIFICATE OF SERVICE

Enclosures: Rule 2.6 - Pre-hearing Procedures – Motions, Witness and Exhibit Lists
Rule 2.7 – Pre-hearing Conferences

Cc: Meg Burt, CC&V (via email)
Wally Erickson, DRMS Senior Environmental Protection Specialist

Certificate of Service

I, Tim Cazier, hereby certify that on January 11, 2017, I deposited a true copy of the foregoing Notice to Parties and Interested Persons to the Cresson Project Permit Amendment 11 Application, dated January 11, 2017, Re: Notice of Extension of Decision Date, Rescheduled Pre-hearing Conference, and Rescheduled Formal Board Hearing, Amendment No. 11 (AM-11) Application for the Cresson Project, Permit No. M-1980-244, Rule 2.6, and Rule 2.7, in the US Mail, postage paid, addressed to the following:

Mary Jane Foley, Trustee
3010 N. Lakeridge Trail
Boulder, CO 80302

Dennis D. Lanning
Dewey-Dwight & Associates L.L.P.
P.O. Box 1710
Cripple Creek, CO 80813

Bruce Brown
Mayor, City of Cripple Creek
337 E. Bennett Ave.
P.O. Box 430
Cripple Creek, CO 80813

Lynda Morgan
Teller County Community Development Services
P.O. Box 1886
Woodland Park, CO 80866

Jack Henris
Cripple Creek & Victor Gold Mining Company
100 N. Third Street
P.O. Box 191
Victor, CO 80860

Teller County Commissioners
County Commissioner
Box 959
Cripple Creek, CO 80813

Teller-Park Conservation District
President
P.O. Box 2027
Woodland Park, CO 80863

Frank McGee
Colorado Parks and Wildlife
4255 Sinton Road
Colorado Springs, CO 80907

Kiel Downing
U.S. Army Corps of Engineers
Denver Regulatory Office
9307 S. Wadsworth
Littleton, CO 80128

Steve Turner
Office of Archaeology & Historic Preservation
History Colorado Center
1200 Broadway
Denver, CO 80203

 1/11/2017
Signature and date

show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the Petitioner and any other facts the Petitioner desires the Board to consider.

2.5.5 Party Status and Petition to Intervene

- (1) The Office shall be granted party status upon request.
- (2) Any other person may seek leave of the Board to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Board based upon the interest of the person and whether that interest is entitled to legal protection under the Act and how that person is affected or aggrieved by the petition for Declaratory Order.
- (3) A petition to intervene shall set forth a concise statement of the facts necessary to demonstrate the nature of its position, and the manner in which the statute, rule or order in question does or does not apply to the Petitioner.

2.5.6 Effect of a Declaratory Order

Any declaratory order or other order disposing of a petition pursuant to this rule shall constitute agency action subject to judicial review pursuant to Section 24-4-106, C.R.S.

2.6 PREHEARING PROCEDURES - MOTIONS, WITNESS AND EXHIBIT LISTS

The provisions of this Rule 2.6 shall apply to the Applicant and any entity that has party status for any 112, 112d, 110 ISL or 112 ISL application.

- (1) All motions, except those made during a hearing, or when the Board deems an oral motion to be appropriate, shall be in writing and shall state the grounds for the motion. Motions shall be received by the Board no later than two (2) Working Days following the pre-hearing conference. Any written response to a motion must be received by the Board no later than three (3) Working Days prior to the date of the Formal Board Hearing.
- (2) A party to a Formal Board Hearing may use witnesses or exhibits at the

Formal Board Hearing. Parties shall provide a written list of all potential witnesses and exhibits at the Pre-hearing Conference in accordance with the following:

- (a) The list of potential witnesses must include each witness' name, current address and phone number, area of expertise (if expert witness), and the subject matter of the testimony. Parties are not obligated to use any witness even if listed, but parties may not, without express permission from the Board at the Formal Board Hearing, introduce testimony from a witness that was not listed in accordance with this Rule.
- (b) Information on exhibits shall be exchanged as follows:
 - (i) For any materials not already in the Office public files, each party to the Hearing shall provide all other parties to the Hearing and the Office with copies of any materials to be used as exhibits at the Formal Board Hearing at or before the Pre-hearing Conference. Where an item cannot practicably be reproduced, the exhibit must be made available to the parties and the Office for inspection upon request.
 - (ii) For any materials that are already in the Office public files, and for any materials not provided to the other parties pursuant to the exception set out in Rule 2.6(2)(b)(i), each party shall provide all other parties and the Office with a list of the materials to be used with sufficient specificity to describe the exhibit, including but not limited to the specific title or description of each exhibit, such as maps, reports, adequacy responses, correspondence, agreements, data printouts, photographs, and drawings. The list must also specify where the other parties to the Formal Board Hearing and the Office may review and obtain a copy of, or inspect, each exhibit.
- (3) All motions, responses, replies, witness lists, and exhibit lists shall identify the names, address and phone number of the submitting party, and the file number assigned to the case by the Office. If a party is represented by an attorney or other representative, the name, address and phone number of the attorney or other representative shall be provided on all documents submitted to the Board. All motions and lists shall be served on all parties and the Office at the same time they are served on the Board. The Board shall be served through the Office of Mined Land Reclamation. The Board shall be provided fifteen (15) copies, one of which shall be unbound.

2.7 PRE-HEARING CONFERENCES

2.7.1 General Provisions

Prior to the Formal Board Hearing on any matter, the Board may hold a Pre-hearing Conference in accordance with the following procedures:

- (1) The Pre-hearing Conference will be held to describe the Office's review process, to explain the rights and responsibilities of parties, to discuss and resolve issues to the extent possible, to describe the Board Hearing processes, to propose a list of issues under the Board's jurisdiction, to simplify that list, and to identify parties.
- (2) The Pre-hearing Conference shall be conducted by a Pre-hearing Conference Officer appointed by the Board.
- (3) The Pre-hearing Conference Officer shall prepare a proposed Pre-hearing order. The proposed Pre-hearing Order shall be made available to all parties prior to the Formal Board Hearing. In no instance shall the Pre-hearing Conference Officer's recommendations to the Board be considered final agency Office action for the purposes of judicial review under Section 24-4-106, C.R.S.
- (4) The proposed Pre-hearing Order shall include:
 - (a) a recommended list of the parties and their names, addresses and phone numbers;
 - (b) a recommended list of issues to be considered by the Board at the Formal Board Hearing; and
 - (c) a recommended schedule for the hearing with time allotments set for presentation by each party and the Office.
- (5) In the case of a Pre-hearing Conference held on the matter of a 112 or 112d Reclamation Permit application, the Pre-hearing Conference shall be held after the Office has issued its written recommendation and at least ten (10) calendar days prior to the Formal Board Hearing.

2.7.2 Board Consideration of the Proposed Pre-hearing Order

At the Formal Board Hearing on a matter for which a Pre-hearing Conference was held, the Pre-hearing Conference Officer or a representative of the Pre-

hearing Conference Officer shall present the proposed Pre-hearing Order to the Board for its consideration. The Board shall consider any objection to the proposed Pre-hearing Order submitted by a party, as well as any changed circumstances related to the Formal Board Hearing arising subsequent to the Pre-hearing Conference, and shall subsequently adopt, amend and adopt, or reject the proposed Pre-hearing Order. If the proposed Pre-hearing Order is rejected by the Board, the Chair of the Board shall direct the Formal Board Hearing on the matter.

2.7.3 Parties Rights and Responsibilities

- (1) All parties have the right to present evidence, call witnesses, and cross-examine all other parties' witnesses. All parties are entitled to be represented by an attorney, or may designate a proxy, by way of a written proxy authorization, to attend the Pre-hearing Conference on behalf of the party. The proxy authorization must be on a form approved by the Board and presented to the Pre-hearing Conference Officer on or before the date of the Pre-hearing Conference.
- (2) In order for a person to seek judicial review of the Board's decision, that person must have been a party to the Formal Board Hearing that considered the issue. However, all parties to the Formal Board Hearing on a matter, that do not file for judicial review are required by Section 24-4-106, C.R.S., to be named as defendants in any judicial review action.
- (3) Any person who is a party to a matter before the Board and who wishes to withdraw as a party must do so in writing prior to the commencement of or on the record during the Formal Board Hearing on the matter.
- (4) Any party who does not attend the Pre-hearing Conference forfeits its party status and all associated rights and privileges, unless such party provides a fully executed proxy authorization form to the Pre-hearing Conference Officer and the party's authorized representative is present. A party may attend the Pre-hearing Conference via telephone if such a request is made to the Pre-hearing Conference Officer, or a representative, at least five (5) working days, or less for good cause shown, prior to the scheduled Pre-hearing Conference date, and facilities at the site of the Pre-hearing Conference allow for a conference call.
- (5) If all parties to a 112 or 112d Reclamation Permit application that is to be considered at a Formal Board Hearing withdraw, the Board directs the Office to act on behalf of the Board and to timely approve or deny the application, unless the Office determines that a Formal Board Hearing should be held.