



COLORADO

**Division of Reclamation,
Mining and Safety**

Department of Natural Resources

1313 Sherman Street, Room 215
Denver, Colorado 80203

October 4, 2017

Paul Newman & Eric Williams
Colorado Legacy Lands
4601 DTC Boulevard, Suite 130
Denver, CO 80237

Jim Harrington
Alexco Environmental
171 N. College Ave.
Fort Collins, CO 80524

**RE: File M-1977-300; Schwartzwalder Mine; Request for Information Concerning
Proposed Permit Transfer**

Dear Mr. Newman, Mr. Williams and Mr. Harrington:

On August 28, 2017, Division staff, representatives of Cotter Corporation, and representatives of Colorado Legacy Lands, LLC (CLL) met to discuss a potential transfer of the Schwartzwalder Mine, Permit No. M-1977-300. As part of this transfer application process, the Division indicated it will exercise its Board-delegated authority to conduct a thorough technical and financial qualification review prior to taking any action. As outlined in this letter, the Division seeks additional information from CLL that it is "capable of assuming all responsibility for the conditions included under the original permit" as required by the Hard Rock Rules.

Pursuant to the authority granted under the Mined land Reclamation Act (Act) and implementing Hard Rock Rules, the Division seeks information from CLL sufficient to demonstrate to the Board and Division the financial qualifications of CLL to not only submit an adequate financial warranty pursuant to section 34-32-118, but also carry out, in accordance with the Act and Hard Rock Rules, the conditions of the permit. The information provided should demonstrate the "successor operator" currently has, or has reasonable assurance of obtaining, the financial means necessary to cover the estimated operational expenses associated with this permit for the duration of the life of the mine.



The Division and Board, under the authority of the Act and Hard Rock Rules, regulate mining and reclamation in Colorado to protect the health, safety, and welfare of the people of Colorado and to ensure that affected lands are appropriately reclaimed by entities operating mines. See C.R.S. § 34-32-102. The Board has the responsibility to balance the protection of the human health, safety and the environment, with the responsible and orderly development of an economically sound and stable mining and minerals industry. C.R.S. § 34-32-102. The Board has broad discretion in prospecting, mining, and reclamation matters in Colorado and the General Assembly has vested the Board with “jurisdiction and authority over all persons and property” necessary to enforce the Act. C.R.S. § 34-32-105(4). Like the Board, the Division has full power and authority to carry out and administer the provisions of the Act. C.R.S. § 34-32-104. The Division assists the Board in carrying out the Board’s statutory responsibilities – the Board may, and does, delegate authority to the Division as necessary. C.R.S. § 34-32-107(2). Relevant here, the Board has delegated authority to the Division to administer the transfer of mining and reclamation permits. Such administration includes the vetting of all successor operators to ensure its ability to operate the permit in a manner that will be protective of public health, safety and the environment.

The transfer of permit process authorized under section 34-32-119 is implemented via Hard Rock Rule 1.12. Specifically, Rule 1.12.1(3) states: “Approval of a permit transfer and succession of Operator request shall be given by the Office if it finds that the successor Operator is capable of assuming all responsibility for the conditions included under the original permit.” The Division has historically interpreted this Rule to grant the necessary discretion to review and approve both the technical and financial qualifications of every applicant for a permit transfer prior to taking final action on the application.¹

In addition to the ability to post a financial warranty, the primary operational expenses associated with the conditions of this permit include costs associated with the perpetual operation of the dewatering/pumping of the mine pool, water treatment facilities, discharge systems, and monitoring .

In exercising its authority under the Act and the discretion set forth in the Hard Rock Rules, the Division seeks the following financial qualification information from CLL as evidence of its ability to finance operational and compliance costs associated with the conditions of this permit:

1. Name of company and business address(s);
2. Type of Business; Non-Profit or For Profit. Prior information on Legacy Lands Stewardship indicates it is incorporated as Public Benefit Company. If CLL is also a Public Benefit Company please explain;

¹ An agency’s interpretation of its own regulation is generally entitled to great deference and will be accepted if it has a reasonable basis in law and is warranted by the record. *Ohlson v. Weil*, 953 P.2d 939, 941 (Colo.App.1997).

3. Date of incorporation, states of incorporation. Also list all states in which CLL is licensed to conduct business;
4. Describe all related party transactions, as set forth below, that apply to this corporate entity. This is to include all transactions between this corporation and any and all of the following:
 - a. Affiliated corporations, affiliated partnerships, or other non-affiliated business entity(s) that, although it is not owned by this corporation, may have the same owner/investor as does this corporation;
 - b. The parent corporate entity, all subsidiary entities of the parent corporation, and all subsidiaries of this corporation;
 - c. The current Permittee and Operator of Permit M-1977-300;
5. Name, address and contact information for all registered agents;
6. Name, address and contact information of each principle agent or stockholder;
7. Information related to Corporate structure; Name, address and contact information for each current officer, including term in office;
8. Name, address and contact information for each current member of the Board of directors, including term in in office;
9. Has CLL filed federal and state corporate income tax returns during the last three (3) taxable years? If no, please explain. If yes, please submit a copy of each return with your responses;
10. Has CLL prepared financial statements for the last three (3) years? If no, please explain. If yes, please submit a copy of each statement with your responses (audited statement preferred);
11. Does CLL maintain bank accounts? If no, please explain. If yes, list the name and address of the bank or other entity. Please also provide the name on the account, the holder of the account, and the account balance;
12. For the last taxable year, indicate in round figures, CLL's (i) Gross Income, (ii) Expenses (fixed and current), (iii) Gross Profit (or

loss), (iv) Net Income after taxes, and (v) Salary or compensation paid to current employees;

13. Has CLL ever been the subject of any proceeding under the provisions of any state insolvency law, of the federal Bankruptcy Act? If yes, please provide all relevant information;
14. Provide a list of all property interest or real estate interests currently held by CLL having an estimated value in excess of \$1,000;
15. Because CLL may be a newly-formed entity organized for the primary purpose of transferring this permit, please also include information showing: (i) The legal and financial relationships CLL has or proposes to have with its owners or stockholders; (ii) The owners' or stockholders' financial ability to meet any contractual obligation to the entity which they have incurred or proposed to incur; (iii) The legal and financial relationships CLL has or proposes to have with affiliated corporations, affiliated partnerships or other business entity that may have the same owner/investor as does this corporation; (iv) The legal and/or financial relationships CLL has with current Permittee and Operator of this permit;
16. Submit information that demonstrates CLL possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operational costs for the conditions required under this permit. As evidence of ability to cover estimated operation costs please submit estimates for total annual operating costs for each of the first five years of operation. CLL shall also indicate the source(s) of funds to cover these costs.

Although the Division is familiar with Alexco and its work at the Schwartzwalder Mine, the Division has minimal information on Legacy Lands Stewardship or CLL, the newly formed entity proposing to transfer and assume liability for this permit. Any additional background information you can provide on CCL would be appreciated, specifically:

- CCL business plan or business model;
- Potential or anticipated future use of the property/compliance with the approved reclamation plan;
- Ability to achieve and maintain compliance with the August 11, 2010 Board Order and the terms and permit conditions created under AM-04;
- Anticipated plan related to perpetual water management and water treatment and discharge;
- Plan for permit termination and release;

- Property management obligations being assumed by CLL.

Thank you for your attention to this matter and providing the necessary information related to CLL and its ability to successfully assume all responsibility for the conditions included under this permit as required by the Hard Rock Rules. If you have any question, please feel free to contact the Division.

Sincerely,



Anthony J. Waldron
Minerals Program Supervisor

Ec: Wallace Erickson-DRMS
Michael Cunningham-DRMS
Jeff Fugate-AGO
Ken Mushinski-Cotter Corporation