**Earthworks • INFORM**

**San Juan Citizens Alliance • Sheep Mountain Alliance**

Aug. 18, 2017

The Colorado Mined Land Reclamation Board
Colorado Division of Reclamation, Mining & Safety
1313 Sherman Street
Denver, Colorado 80203
Via email to: Ginny.Brannon@state.co.us, Jeff.Fugate@state.co.us,
Russ.Means@state.co.us, camille.mojar@state.co.us

Re: Objection to Temporary Cessation Status for Mineral Joe Mine, Permit No. M-1997-284; SM-18 Mine, Permit No. M-1978-116; and CM-25 Mine, Permit No. M-1977-307

Dear Members of the Mined Land Reclamation Board,

The Information Network for Responsible Mining, Earthworks, San Juan Citizens Alliance and Sheep Mountain Alliance file this objection to the retroactive application of temporary cessation status for the Mineral Joe, SM-18 and CM-25 mines, operated by the Cotter Corporation.

The staff and members of these organizations are directly and adversely affected parties as defined by Rules 1.1(38.1) and 1.13.6 and take a direct interest in the operations and final reclamation of these mines. The staff and members of these organizations regularly use and enjoy the public lands at these mines and in the surrounding areas in the San Miguel-Dolores watershed. We appreciate the opportunity to provide these comments and request that a hearing to review the status of the Mineral Joe, SM-18 and CM-25 mines be held before the Mined Land Reclamation Board in September pursuant to the Division of Mining, Reclamation and Safety notice of Aug. 11, 2017.

For consideration by the Board, we have the following comments:

The Mined Land Reclamation Board is obligated to enforce all provisions of the Mined Land Reclamation Act (MLRA).

The Colorado Mined Land Reclamation Act states uncompromisingly that a mine must be reclaimed after a decade of inactivity. The law says, at C.R.S. § 34-32-103(6) (a)(III): "In no case shall temporary cessation of production be continued for more than ten years without terminating the operation and fully complying with the reclamation requirements of this article."

Cotter Corporation's uranium mines have not had "production" far beyond the maximum ten-year period allowed under state law. The MLRA requires absolutely and unequivocally the production of ore in order to retain a reclamation permit, at C.R.S. § 34-32-103(6)(a). As to this requirement, the law states that a permit may continue in effect as long as "an operator continues to engage in the extraction of minerals and complies with the provisions of this article." An additional requirement of this clause is that "Mineral reserves are shown by the operator to remain in the mining operation…" In the case of these mines, the Cotter Corporation has met neither of these requirements.

The Board and the Division failed to implement the reclamation requirements of the MLRA during the 1980s and 1990s, when most of Colorado's uranium mines became inactive and stopped producing ore. Then the mines were allowed to unlawfully retain their permits with the misapplication of "intermittent" status. In the case of the SM-18 and the Mineral Joe mines, they were also allowed to delay full reclamation activities at the mines. According to the Division's notice letters to Cotter on June 29, 2017, the mines were not placed on temporary cessation status as intended in 2012. Now we are in a place where the Division is attempting to apply temporary cessation status retroactively to three mines while at the same time the operator is already asking for a renewal and a second period of another five years.

Notably, the Board's Rules specifically require that "[i]f the Operator plans to, or does, temporarily cease production of the mining operations for one hundred eighty (180) days or more, the Operator must file a Notice of Temporary Cessation in writing, to the Office." MLRB Rule 1.13.5(1). In this case, Cotter appears to have failed to submit any such Notice, despite ceasing production. Despite the Division's apparent willingness to accept some of the blame, Cotter's responsibility was clear, and it failed to comply. The Board should not now be in the position of granting a retroactive temporary cessation status not contemplated by the Rules or MLRA. The MLRA does not allow an Operator to avoid filing the Notice simply because it is conducting other activities at the site. The MLRA speaks directly to the term "production" in its definition of "development" at C.R.S. § 34-32-103(4). In that "development" definition, the statute makes clear that "production" means the actual extraction of ore from the mine, beyond activities such as "preparing the site for mining, defining further the ore deposition by drilling or other means, conducting pilot plant operations, constructing roads or ancillary facilities, and other related activities." C.R.S. § 34-32-103(4).

With regard to the lack of enforcement of the 10-year provision, simply because the law went unenforced in the past is no reason for failing to enforce it now. The procedural, administrative, labels that place a regulatory status on these mines, whether it be "Temporary Cessation" or "Intermittent Status", and the Division's acquiescence to any such administrative status, does not override the unambiguous statutory mandate. What matters is the legal requirement in Colorado that a mine may cease producing ore for up to ten years, but "in no case" can a mine delay reclamation beyond that length of time. That is because a fundamental tenet of the law is that mined lands must be returned to the beneficial use of the people of Colorado once mining is done; this is the only way to

achieve the "orderly development of minerals" "while requiring those persons involved in mining operations to reclaim land affected by such operations so that the affected land may be put to a beneficial use to the people of this state" that the Legislature intended when the Act was passed in 1977. C.R.S. § 34-32-102(1). No administrative status, or regulation for that matter, may override the express terms of the statute.

Our position on this matter remains unchanged: these mines are not eligible for temporary cessation and it is past time for them to be reclaimed. Whether the mines have been properly classified with a "Temporary Cessation" label or not, it is plain that the mines ceased production long ago and have not met the reclamation requirements of the Mined Land Reclamation Act. It is time for the Board to enforce the law.

In 2012, we formally raised the same issue of inactivity at the Mineral Joe Mine with the Division and Cotter Corporation responded on Jan. 25, 2013.[1] In that response, Cotter conceded that it had not produced ore at the Mineral Joe Mine since 1989, when 3,043 tons of ore were shipped. The year before, in 1988 the mine shipped 1,107 tons, and in 1987 the mine shipped 900 tons.

In other words, production ceased at the Mineral Joe nearly 28 years ago. The mine has not met the MLRA mandate to produce ore as required at C.R.S. § 34-32-103(6)(a), nor has Cotter Corporation demonstrated that sufficient mineral reserves remain at the mine. Indeed, the application filed by the Operator contains no information on ore reserves, grades, or anticipated price points for any resumption of production. As such, the Operator has not met its burden of entitlement to Temporary Cessation. In any case because the mine has not produced for longer than the maximum ten years allowed under the MLRA, the Mineral Joe Mine is ineligible for temporary cessation.

The SM-18 Mine has also avoided final reclamation in violation of the MLRA. In its most recent annual report,[2] Cotter reported 2007 as the date of last activity at the mine, which indicates that it has been a decade, at minimum, since the SM-18 operated and produced ore. In its mining plan (Exhibit D of Cotter's 2012 amendment application) cited in the temporary cessation notice, Cotter provides no history or details of prior operations at the SM-18.[3] In its August 2016 inspection report for the mine, the Division noted the lack of recent mining activity and the partially reclaimed status of the site.[4] The

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[1] Available in the permit file at http://drmsweblink.state.co.us/drmsweblink/0/doc/975174/Electronic.aspx?searchid=0e821d0b-cdcc-4b3c-ae18-e67f1fe3083c

[2] Available in the permit file online at http://drmsweblink.state.co.us/drmsweblink/DocView.aspx?id=1150030&page=1&&&dbid=0

[3] See EPP amendment application in the permit file online at http://drmsweblink.state.co.us/drmsweblink/0/doc/968176/Page1.aspx?searchid=e686d39d-354e-4726-9dec-aeeab68137a4

[4] Available in the permit file online at http://drmsweblink.state.co.us/drmsweblink/0/doc/1146679/Electronic.aspx?searchid=e686d39d-354e-4726-9dec-aeeab68137a4

SM-18 Mine has similarly not been in production for longer than 10 years, and is ineligible for temporary cessation. Indeed, the record appears to demonstrate that each of these mines may have already enjoyed a full ten years of administrative Temporary Cessation status – and now asks for more – which the Board is not permitted to grant.

The CM-25 Mine is not eligible for temporary cessation because it is a reclaimed mine and we support the Division's position that the mine has reached its permit conclusion and should be inspected for release. According to its most recent annual report, Cotter reported the last date of any potential "production" activity at the CM-25 Mine as 2003.[5] In its notice to the Division on July 31, 2017, Cotter asserts that mineral reserves still exist at the mine and the company plans to operate it in the future, but does not provide the detailed plan to resume operations that is required by Rule 1.13.5.

Cotter asserts in its notices of temporary cessation for the SM-18 and CM-25 mines that a federal court injunction is a current barrier to recommencing mining operations. (The Mineral Joe Mine is not affected by the case, *Colorado Environmental Coalition et al. v. Office of Legacy Management.*) A federal court injunction against the U.S. Department of Energy is irrelevant to the state's permitting status bestowed on these mines. As stated in their notices of temporary cessation, the mines are not active because of the market conditions for uranium.

Cotter Corporation did not comply with Rule 1.13.7, which requires that mines provide a notice of temporary cessation to the Division within 180 days of ceasing operations. It also has not produced information necessary met all of the pre-requisites for Temporary Cessation. Compliance with all rules is a requirement for meeting the conditions of temporary cessation. Had Cotter complied with this rule and properly notified the Division that the mines were on temporary cessation then it would not be necessary now for the Division to apply this status retroactively for a period of almost five years, which once again appears to be yet another delay tactic for avoiding final closure.

We request that you deny the retroactive periods of temporary cessation for the Mineral Joe, SM-18 and CM-25 mines. In its July 31 notice letters to the Division, Cotter Corporation also stated its intent to apply for renewals of temporary cessation status and requested a Board hearing in December 2017. Although we understand that this matter is not yet under consideration, we also request that we be considered parties to the hearing once it is noticed. We reserve the right to supplement these comments to respond to any information submitted in this matter from Cotter Corporation or the Division. Thank you in advance for your consideration.

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[5] Available in the permit file at http://drmsweblink.state.co.us/drmsweblink/0/doc/1180835/Page1.aspx?searchid=de0f846c-cd32-478c-aee6-1aaad02d8b99

Respectfully submitted,

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