Earthworks • Information Network for Responsible Mining

San Juan Citizens Alliance • Sheep Mountain Alliance

Jan. 19, 2018

The Colorado Mined Land Reclamation Board
Colorado Division of Reclamation, Mining & Safety
1313 Sherman Street
Denver, Colorado 80203
Via email to: Russ.Means@state.co.us, Camille.Mojar@state.co.us,
Jeff.Fugate@coag.gov
Re: Objection to Request for Extensions of Temporary Cessation Status, Cotter Mines

Dear Members of the Colorado Mined Land Reclamation Board,

The Information Network for Responsible Mining, Earthworks, San Juan Citizens Alliance and Sheep Mountain Alliance submit this combined objection to comprehensively address nine requests to extend temporary cessation status from the Cotter Corporation (Cotter). These organizations object to Cotter's requests for temporary cessation for the following permits:

- SR-13A Mine, Permit No. M-1977-311
- SR-11 Mine, Permit No. M-1977-451
- Mineral Joe Claims, Permit No. M-1977-284
- C-LP-21 Mine, Permit No. M-1977-305
- JD-9 Mine, Permit No. M-1977-306
- CM-25 Mine, Permit No. M-1977-307
- JD-6 Mine, Permit No. M-1977-310

- SM-18 Mine, Permit No. M-1978-116
- JD-7 Pit, Permit No. M-1979-094-HR

With the exception of the Mineral Joe Claims, these operations are situated on public lands leased to Cotter Corporation through the U.S. Department of Energy (DOE) Uranium Leasing Program. For the purposes of clarity and simplicity, the multiple issues that collectively concern these mines and reasons to deny the permit-specific requests for temporary cessation are discussed together in this document.

The staff and members of the objecting 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 mine sites. The staff and members of these organizations regularly use and enjoy the public lands at and surrounding Cotter Corporation's mines, including at Slick Rock, Bull Canyon, Monogram and Davis mesas, Long Park and Uravan, all within the Dolores-San Miguel watershed. We appreciate the opportunity to provide these comments and objections and request to participate as a party to the hearing requested by Cotter before the Mined Land Reclamation Board. As the party requesting the hearing, Cotter bears the full burden of proof to demonstrate that it is entitled to temporary cessation for each of the permits.[1]

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

1. Reclamation of mined lands must be achieved in order to provide beneficial public use and meet Colorado's legal mandate.

The purpose of the Colorado Mined Land Reclamation Act (MLRA) is "to encourage the orderly development of the state's natural resources, while requiring those persons involved in mining operations to reclaim land affected by such operations so that the

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[1] Colo. State Bd. of Pharmacy v. Priem, 272 P.3d 1136, 1140 (Colo. App. 2012)
[2] C.R.S. § 34- 32-102(2)
[3] C.R.S. § 34-32-103(6) (a)(III) (emphasis added)
[4] Id.
[5] C.R.S. § 34-32-103 (6)(a) (I) (II) and (III)

affected land may be put to a use beneficial to the people of this state."[2] Implicit in this statutory mandate is the expectation that a final cleanup of mined lands will occur once mining is done, and is a guarantee made to the public that comes coupled with the issuance of a permit. Without final reclamation of mined lands, the intent of the law is not fully satisfied.

The law also sets out a clear deadline for when final reclamation of mined lands must occur. Unequivocally, the law states: "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."[3] The law also provides clear direction on how a permit may remain in effect by defining the "life of the mine," at the end of which final reclamation must have been achieved. In order for a permit to remain in effect, a mine must "engage in the extraction of minerals," it must show that mineral reserves continue to exist, and it must resume production of ore within five years of having ceased production.[4] The ability to delay final reclamation through temporary cessation is limited to five years after the end of production, and may only be extended for an additional five years with approval from the Board. In no case, the law strongly emphasizes, can a state of non-productivity extend more than a decade.[5] The ten-year deadline is also explicitly reiterated in the Board's Rules and Regulations.[6]

The MLRA also clearly determines that mining is considered done once the production of ore ceases, thereby providing certainty to the enshrined requirement that the actual production of ore is necessary in order to maintain a permit. The administrative designation of "temporary cessation" is simply that – an administrative designation.

None of the nine mines operated by Cotter Corporation that are included in the notices of temporary cessation at issue currently have operated in a significant manner, by producing ore for the market, since the 1980s, when the industry experienced an

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[2] C.R.S. § 34- 32-102(2)
[3] C.R.S. § 34-32-103(6) (a)(III) (emphasis added)
[4] Id.
[5] C.R.S. § 34-32-103 (6)(a) (I) (II) and (III)
[6] 2 CCR 407-1, Rule 1.13.9

expansive and lasting downturn. Only in the case of a few of the mines – the JD-6 and Mineral Joe, the JD-9, and the SM-18 – did token mining activities occur in previous decades, which did not meet the legal threshold required by the MLRA and the Rules, regardless. Without actually producing ore, Cotter Corporation was obligated to fully reclaim each of these mines within ten years of their initial shutdowns in the early 1980s. "Mining activities" or maintenance work do not meet the MLRA's requirement that ore be produced.

Despite the lack of production of ore at these mines, Cotter Corporation has unlawfully benefitted from the Board's failure to consistently enforce, for nearly four decades, the MLRA's requirement for final reclamation.

2. The clock ran out on these mines long ago.

The Cotter Corporation has benefitted from the historical misapplication of "intermittent" status to uranium mines to delay final reclamation. While the current Division leadership and staff have taken laudable steps in the last several years to reform this practice, the fact is that the clock has already run down on these mines, and been reset before, only to run down again. It is time for the Board to follow the Division's lead to stop resetting the clock and start fully implementing the law.

The uranium mines located in western Montrose and San Miguel counties experienced a significant downturn in activity following the collapse of the nuclear power industry in the wake of the accident at Three Mile Island in 1979. In the early 1980s, uranium mines in both counties shut down and ceased operating. In accordance with the requirements of the MLRA, the Division of Minerals & Geology approved temporary cessation status for these mines.[7]

In the 1990s, the original ten-year absolute limit on temporary cessation, which allowed the delay of final cleanups, had run out. In response, Cotter converted the permits to

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[7] See DMG's position in the notice of temporary cessation for the Mineral Joe Claims, for example, on Dec. 20 1993, located in the permit file at http://bit.ly/2DpI66y.

intermittent status through a misinterpretation of the statute that allowed Cotter to keep their permits based on the production of ore **and/or** engaging in supporting, but non-producing "mining activities."[8] This policy unlawfully overlooked the MLRA's requirement that intermittent mines engage in the production of ore on an annual basis in order to maintain their status, and to resume operating every year.[9]

In 2012, the Division of Reclamation, Mining and Safety began to receive the environmental protection plans that were required of all uranium mines in Colorado as a result of the passage of HB 08-1161, and began to once again review the status of the Cotter mines and the lengthy period of time of non-production where final cleanup of the sites had been delayed. On Nov. 9, 2012, the Division informed Cotter Corporation that it must justify the intermittent operating status: 'In order to maintain IS active mining activities must occur **each** year,' the Division wrote [their emphasis]. 'The Act provides that intermittent operations must "resume operating within one year." C.R.S. § 34-32-103(8); Rule 1.1(31). "Active mining **does not** include general site maintenance, or off-site smelting, refining, cleaning, preparation, transportation, and other operations not conducted on affected land."[10]

The Division rightly concluded that Cotter's mines did not meet the requirements of intermittent status, and instead Cotter sought another term of temporary cessation. In 2013, INFORM objected to the new temporary cessation requests for the mines and requested that the mines be fully reclaimed and that the land be returned to beneficial public use, as required by the MLRA. Despite these objections and legal arguments, and the fact that the majority of these mine permits had already enjoyed a full ten years of temporary cessation plus a decade or more of illegitimate intermittent status, the Board ordered that eight of Cotter's long-dormant uranium mines be placed on temporary

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[8] See, for example, DMG's Nov. 9, 2012, letter to Cotter informing them of what would be necessary in order to maintain intermittent status, located in permit file at http://bit.ly/2FWO4Jq. See also Jan. 12, 2012, letter from DRMS defining the activities that support intermittent status, as opposed to production, located in permit file at http://bit.ly/2mSQ7FJ.

[9] C.R.S. § 34-35-103(6)(a)(II) and (8)

[10] As discussed in Note 8.

cessation on May 7, 2013.[11] The Mineral Joe Claims, the CM-25 and the SM-18 were left out of these proceedings and were retroactively placed into temporary cessation in a separate process in September 2017.[12]

Just because the Board and the Division did not attempt to fully enforce the law prior to 2012, there is no excuse not to fully enforce the law now. In fact, enforcement is made even more imperative as a result of this longstanding oversight. It is important to note that Division is attempting now to fully enforce the law and achieve final reclamation at these mines.

On June 29, 2017, the Division sent letters to Cotter addressing temporary cessation status. For the three Cotter mines that are already reclaimed – the SR-13A, the CM-25 and the LP-21 mines – the Division instructed Cotter to initiate the final inspections and release of the permits. The remainder of the mines, which are not fully reclaimed, were directed to either resume mining, to begin final reclamation work, or to apply for a second five-year period of temporary cessation, in accordance with the MLRA and the Rules.[13] Throughout the past five years, the Division has discussed with mining industry representatives in multiple meetings that it would not support continued delays of final reclamation and second renewal periods of temporary cessation. [14]

3. Indicators for and against temporary cessation are in place at the Cotter mines and there are small variations on the broader theme of long-term inactivity at each site.

There are eight Cotter-operated mines that are currently requesting second periods of temporary cessation that share the general history outlined above. Each mine, however,

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[11] MLRB May 7, 2013, Findings of Fact, Conclusions of Law and Order, in permit file at http://bit.ly/2DkJCCP.
[12] Aug. 21, 2017 notice of agenda, in permit file at http://bit.ly/2FW5zd6.
[13] For the LP-21, CM-25 and SR-13A Mines, see June 29, 2017, letter from DRMS online at http://bit.ly/2DxZ4Pr.
For the JD-6, JD-9, JD-7 mines see June 29, 2017, letter from DRMS online at http://bit.ly/2DQfyQj.
For the Mineral Joe see letter at http://bit.ly/2mXr4SO.
For the SM-18 see http://bit.ly/2DqqaIP.
[14] July 26, 2017 Board Hearing transcript at pp. 8-12.

has site-specific conditions that indicate that they should be denied the right to delay final reclamation any further. Under Rule 1.13.1(2) the Board considers whether to extend temporary cessation by determining site-specific factors.

Three of these mines – the LP-21, the SM-18 and the SR-13A – are already fully reclaimed according to Division records and Board orders. Final reclamation is an indication against temporary cessation under Rule 1.13.3(1).[15] The Rule states that a mine is ineligible for temporary cessation status if 'extraction has been completed and only final reclamation and related activities occurring at the site are part of the "life of the mine".' Because the LP-21, the SM-18 and the SR-13A mines are already reclaimed, all the activities required by the permit have been completed, thus concluding the life of the mine and indicating that only final release of the bond and permits are ahead. This interpretation of the MLRA's legal requirements is the correct one and was put forth by the Division in its June 29, 2017, letters to Cotter Corporation.

All nine of the Cotter mines have indicators of temporary cessation under the Rules.

Rule 1.13.5(2)(3) states that temporary cessation is indicated when "there are personnel other than security people at the site, but they are engaged in activities which can be described as maintenance of housekeeping, or related activity." Cotter does not have any employees working full-time at these inactive mines, only an off-site employee who visits the mines periodically.

Rule 1.13.5(2)(6) states that temporary cessation has already occurred when "there is only minimal or token excavation of mineral or other material." At the Mineral Joe and JD-6 mines, the SM-18 and the JD-9, Cotter has only reported token production of ore during a few years in previous decades. Cotter only reported minimal production of ore at the JD-9 Mine between 2003 and 2006. And Cotter reported only token production at the SM-18 Mine in 2005 and 2006. Notably, all of this activity occurred longer ago than the ten-year statutory limit on non-production.

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[15] See also MLRA at C.R.S. § 34-32-103(6)(b)

Rule 1.13.5(2)(7) states that temporary cessation has already occurred when "mine development has ceased and mining has not recommenced." This is the case with all eight of the Cotter mines, as indicated in the annual reports to the Division that do not report activities other than routine maintenance and notably do not report activities that resulted in the production of ore.

4. Cotter has not met the requirements necessary to be granted second, five-year periods of temporary cessation.

Under Rule 1.13.5(3)(b), the notice for the second period of temporary cessation must provide an explanation of why mining has not recommenced, or explain why final reclamation has not begun. In its notices and requests for a hearing, Cotter provided as reasons for its failure to resume mining the current economic conditions of the uranium market and a federal court injunction against the DOE Uranium Leasing Program. The injunction was ordered by a federal judge on Oct. 18, 2011, and amended on Feb. 27, 2012, regarding a case filed against the Uranium Leasing Program by objectors INFORM and Sheep Mountain Alliance as well as three other conservation organizations.[16] The injunction suspended active mining and other activities on the DOE lease tracts, but allowed opportunities for Cotter Corporation to receive judicial permission to conduct activities at the mines by consent of the parties. Cotter concedes that the amended injunction "excluded from the injunction's scope certain maintenance and reclamation activities and other work," as stated in notices of temporary cessation.[17] Importantly, the amended injunction did nothing to restrict DOE's processing of site-specific plans of operation and explicitly exempted activities necessary "to comply with orders from federal, state, or local government regulatory agencies."[18]

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[16] Colorado Environmental Coalition v. Office of Legacy Management, Case No. 08-CV-1624

[17] See for instance, notice of temporary cessation for the SR-13A Mine, Aug. 31, 2017, in permit file at http://bit.ly/2BfaH8u.

[18] See enclosed Amended Injunction at 8.

In any case, despite Cotter's reliance on the injunction to excuse its noncompliance with the MLRA, the injunction and the DOE case have no bearing on the status of Cotter Corporation's permits with the Division. The injunction as well as Cotter's leases with the Department of Energy requires full compliance with all the terms and conditions of its permits with the State of Colorado.[19] The DOE lawsuit does not involve, nor does it affect, the interests of Colorado in any way, and the state is not an interested party in the case. Neither does the DOE case involve matters of jurisdiction under state law.

Cotter's plan to resume mining, as required by the demonstration requirement of Rule 1.13.5(3)(c) relies on the dissolution of the injunction by court order, which is expected to occur in the near future as the case is resolved. Yet, even when the injunction is lifted, Cotter will still not be able to resume the production of ore because of the global market conditions that render ore production at these mines economically non-viable.

In contrast to Cotter's assertion that the injunction poses a barrier to their intentions of mining, the injunction absolutely does not prohibit Cotter Corporation from continuing with its permitting requirements. The filing and approval of paperwork to satisfy permit terms and conditions is not prohibited by the injunction. In fact, Cotter's leases with DOE and DOE decisions subsequent to the injunction require Cotter to initiate site-specific applications to DOE to conduct, at each of its leased mines, an Environmental Assessment under the National Environmental Policy Act (NEPA).[20] Cotter has taken no steps to initiate this process. This failure to actively pursue any of the necessary permits

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[19] See enclosed sample lease at p. 5 (Article XI).

[20] See DOE May 12, 2014 Record of Decision at 79 Fed.Reg. 26959 (enclosed):

> As plans for exploration, mine development and operation, or reclamation are submitted by the lessees to DOE for approval, further NEPA analyses for these actions will be prepared and tiered from the Final ULP PEIS. The level of follow-on NEPA analyses will depend on the action being proposed by the lessees. For mining plans to be submitted for approval, DOE will prepare, at a minimum, an environmental assessment with appropriate public involvement to further evaluate potential site impacts.
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> These NEPA analyses will be prepared to inform DOE's decisions on approval of the plans, including the conditions DOE will require to mitigate potential environmental impacts. DOE will conduct further consultations regarding cultural and endangered species, as appropriate, depending on the specific action.

with DOE demonstrates that Cotter is not seriously engaged in an effort to continue ore production at these sites.

Additionally, in a case in 2014 involving notices of temporary cessation from Gold Eagle Mining, which also involved DOE mines subject to the injunction, the Board determined that the injunction did not relieve the operator from its obligations to proceed with submitting reclamation plans and receiving approvals.[21]

(The Mineral Joe Claims are not part of the DOE leasing program and, thus, Cotter's claim that the injunction prohibits reclamation activities does not apply.)

Rule 1.13.5(3)(c) requires the "demonstration of continued commitment to conduct mining operations at the site by the end of the second five-year period" by the operator in requests for renewal of temporary cessation. In its requests, Cotter fails to meet the demonstration requirement by relying on their routine submissions of required permitting documents and environmental protection plans with the Division, as well as the renewal of its leases with the Department of Energy. Minimum routine activities necessary to keep a permit from falling into an enforcement action does not demonstrate a commitment to resume mining operations by the end of the five-year period. If that was the case, all permits that are in good standing would automatically qualify for the second term of temporary cessation – a result contradicted by the requirement to come before the Board to make an adequate demonstration. The failure of Cotter to apply for, or demonstrate any progress toward, any of the necessary updated mine plan applications with DOE is a much more relevant consideration – and shows that Cotter has not met the "demonstrated commitment" test.

5. Cotter's notices of temporary cessation did not meet the requirements of Rule 1.13.5.

The MLRA and the Mined Land Reclamation Board Rules put the burden on the operator

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[21] MLRB, May 28, 2014, Order, requiring Gold Eagle Mining Inc. to submit reclamation plans to DOE for approval. See permit file at http://bit.ly/2mSIsaF.

to obtain temporary cessation status by requiring the operator to promptly report non-production.[22] Rule 1.13.5 states, "If the Operator plans to, or does, temporarily cease production of the mining operation for one hundred eighty (180) days or more, the Operator must file a Notice of Temporary Cessation in writing, to the Office."

The Rules strictly allow for only two five-year temporary cessation periods, and require that the "[i]nitial period shall be the first five years of Temporary Cessation beginning with the 180 day period of production cessation."[23] Thus, the statute and Rules mandate that the production cessation date begins upon the 180-day period of production cessation that the operator must report in its Notice of Temporary Cessation, not the date that the Temporary Cessation status is confirmed by the Division. The MLRA therefore recognizes that the question of when temporary cession begins is a matter of fact established by mandatory reporting of non-production. Cotter did not meet the requirements of the Rules or the MLRA in this regard. For the existing temporary cessation status enjoyed by the Cotter mines currently, Cotter did not fulfill its obligation to report the non-production of ore and attempted to continue relying on the intermittent status loophole. In fact, in three cases, the Board had to retroactively apply temporary cessation status going back more than five years for three of the mines, the SM-18, the CM-25 and the Mineral Joe Claims.[24]

6. Speculative and unfocused market projections do not reflect the economic reality of returning the mines to a productive state in the future.

On Jan. 16, 2017, the nation's two largest uranium producers, Energy Fuels Inc. and Ur-Energy USA Inc. filed a petition with the U.S. Department of Commerce that painted an extraordinarily bleak but realistic outlook for the uranium industry that called for national action to end a crisis in the marketplace. The petition called for the extraordinary actions of establishing national purchase quotas and other trade measures to protect U.S. uranium producers from the economic threat of foreign imports. The petition lays out a clear case

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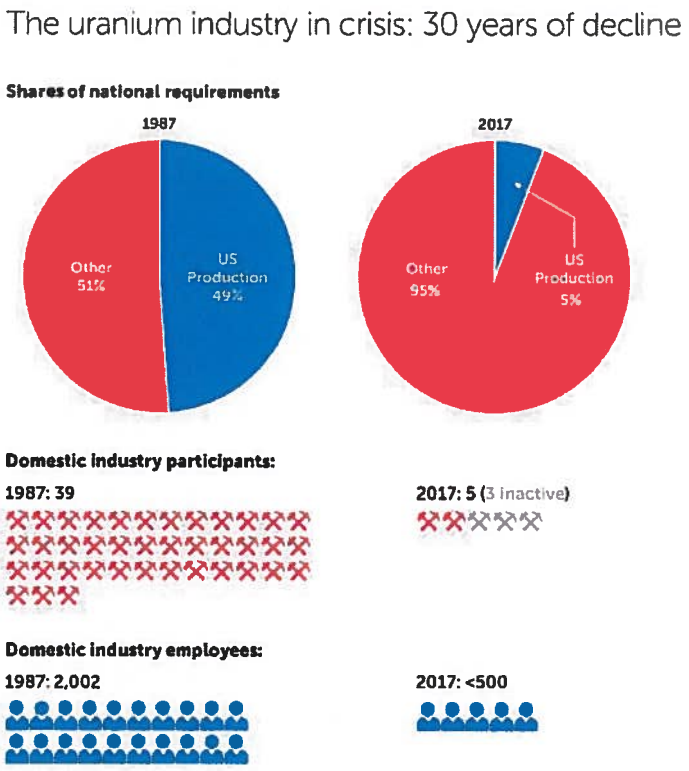
[22] C.R.S. § 34-32-103(6)(a)(II); 2 CCR 407-1, Rule 1.13.5(1)

[23] 2 CCR 407-1, Rule 1.13.5(1)(a)

[24] See agenda notice to Cotter, Aug. 11, 2017, located in permit file at http://bit.ly/2rn5uvF.

of how unlikely it is that uranium mines in the United States will become economically viable within the next five years, and even makes the assertion that disastrous conditions are a near certainty.[25]

The petition included an infographic that depicts the bleak outlook for the uranium industry and the significant declines domestic producers have experienced since the early 1980s, when Cotter's mines all entered their first periods of temporary cessation.



This outlook for the uranium industry presents a sharp contrast to Cotter's terse but confident assertions that mining will resume at all of these mines as soon as these final renewals of temporary cessation status have run out in five years. "Cotter plans to resume

[25] See discussion at pp. 2-4 in petition, located online at http://bit.ly/2mOfybA.

production operations at this mine after the price of uranium returns to a profitable point," states Cotter's notice of temporary cessation for the SM-18 Mine, for example.[26]

"The domestic uranium mining industry has reached a turning point," Energy Fuels and Ur-Energy concluded in the petition. "Absent immediate relief from imports, the industry could soon cease to exist."[27]

Notably, Energy Fuels received authorization from the Board on Nov. 8, 2017, to renew for a second period of five years the temporary cessation status of the Whirlwind Mine, Permit No. M-2007-044, despite never having produced any actual ore at the mine since its initial permitting.[28] In its notice of temporary cessation for the Whirlwind, Energy Fuels wrote:0 "The mid- to long-term market for uranium continues to be positive…"[29]

Permit-specific objections:

The above discussion demonstrates the basis to deny Cotter's request for temporary cessation for each of the permits. The following objections address each permit individually, but incorporate the discussion above to avoid redundancy.

7. Objection to temporary cessation renewal for SR-13A Mine, Permit No. M-1977-311

Cotter Corporation was issued a permit for the SR-13A Mine on Aug. 31, 1979. Less than a year later, on Aug. 8, 1980, the first period for temporary cessation was approved. That status was renewed on July 23, 1985. Then five years later, when the original 10-year

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[26] See July 31, 2017 SM-18 notice, in permit file at http://bit.ly/2BhbG8i.
[27] Ibid, p. 99.
[28] MLRB, Nov. 8, 2017, Findings of Fact, Conclusions of Law, and Order, located in permit file at http://bit.ly/2DlyAx2.
[29] Notice of temporary cessation, Whirlwind Mine, Aug. 31, 2017, in permit file at http://bit.ly/2mRMU9B.

limitation on temporary cessation was up, the SR-13A Mine was approved for intermittent status on Aug. 31, 1990.[30]

The SR-13A is a fully reclaimed mine that has not operated or produced ore since 1980. Following the initial 10 years of temporary cessation in the 1980s, the SR-13A was allowed to delay final reclamation and permit release by being reclassified as an intermittent mine for the next **22 years**. The SR-13A, despite its fully reclaimed status indicating that it was not eligible for temporary cessation, again received this designation beginning on Dec. 15, 2012.[31]

According to the Board's May 7, 2013, order placing the SR-13A into this new period of temporary cessation, Cotter did not report any activities during the history of its permit that indicated the production of ore, only supportive "mining activities." Those reported activities included underground drilling in 1991, 1992 and 1994; ground support work in 1993; surface drilling in 1997 and 2010; and re-pocking of a waste dump in 2010. These activities did not include production.[32]

The objectors request that the Board deny Cotter's application for another period of temporary cessation for the SR-13A and order Cotter to initiate a release of the permit pursuant to the MLRA's requirement that final reclamation of a mine must not be delayed for more than 10 years. According to Division records, production ceased at the SR-13A Mine in 1980, more than **37 years ago**.

Cotter's notice of temporary cessation of Aug. 18, 2017[33] does not meet the requirements of Rule 1.13.5(3)(b) to provide an adequate explanation for why operations have not

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[30] See MLRB May 7, 2013, Findings of Fact, Conclusions of Law and Order, in permit file at http://bit.ly/2DkJCCP.

[31] Id. See also June 29, 2017, letter from DRMS to Cotter notifying them of the mines' change in status. In permit file at http://bit.ly/2Dnacev.

[32] Id.

[33] Aug. 28, 2017, notice of temporary cessation for the SR-13A Mine, in permit file at http://bit.ly/2BfaH8u.

resumed and reclamation has not begun. Cotter incorrectly relies on the unrelated DOE court injunction as an excuse to further delay reclamation and release of the permit. Cotter's notice of temporary cessation does not meet the requirements of Rule 1.13.5(3)(c) by demonstrating a continued commitment to conduct mining operations at the site by the end of the temporary cessation periods. Cotter relies on unsubstantiated and speculative assertions that the uranium market will return to favorable economic conditions.

The objectors support the Division's position as stated in its June 29, 2017, letter to Cotter Corporation notifying them that the SR-13A was not eligible for continued temporary cessation, was fully reclaimed and therefore at the end of the "life of the mine," and must initiate the process to release the permit.[34]

8. Objection to temporary cessation renewal for SR-11 Mine, Permit No. M-1977-451

Cotter Corporation was issued a permit for the SR-11 Mine (also called the Ike Mine) on Feb. 15, 1979. The mine was approved for its first period of temporary cessation on Dec. 23, 1981. That status was renewed on Nov. 28, 1986. On Oct. 18, 1990, the SR-11 Mine was reclassified as an intermittent operation and was able to delay final reclamation of the mine under this loophole for an additional **22 years**.[35]

On Dec. 15, 2012, the SR-11 was again granted temporary cessation status by the Board order in May 2013. As noted in the order, Cotter reported only supportive mining activities at the SR-11 during those years. These included surface drilling between 1991 and 1994 and again in 1996 and 2002; construction of a portal and waste dump, and drift development in 2005; construction of berms and stormwater runoff basins; and waste dump pocking and berm work in 2010 and 2011.[36] Although Cotter conducted work at

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[34] See June 29, 2017, letter in permit file at http://bit.ly/2Dnacev.
[35] See MLRB May 7, 2013, Findings of Fact, Conclusions of Law and Order, in permit file at http://bit.ly/2DkJCCP.
[36] Id.

the SR-11 to move toward a re-initiation of mining, no actual production of ore occurred, as required by the MLRA.

In a Division review memorandum to the Department of Energy dated May 16, 2007, the Division noted the lack of production at the SR-11. "A letter from Cotter dated 6/21/05 states that the development and production at this mine would commence in July 2005. The development work was the driving of a new decline to access the ore body. The annual report dated January 2006 states that development at this mine ceased in November 2005. The reports do not indicate that or if there was any ore production during this brief period of activity. The other annual reports and inspection reports reviewed indicate that the site has been inactive over the remainder of the period of interest."[37]

The objectors request that the Board deny Cotter's notice for another period of temporary cessation for the SR-11 and order Cotter to initiate final reclamation of the site pursuant to the MLRA's requirement that final reclamation of a mine must not be delayed for more than 10 years. According to Division records, production ceased at the SR-11 Mine in December 1981, more than **36 years ago**.

Cotter's notice of temporary cessation of Nov. 22, 2017[38] does not meet the requirements of Rule 1.13.5(3)(b) to provide an adequate explanation for why operations have not resumed and reclamation has not begun. Cotter incorrectly relies on the unrelated DOE court injunction as an excuse to further delay reclamation and release of the permit.

Cotter's notice of temporary cessation does not meet the requirements of Rule 1.13.5(3)(c) by demonstrating a continued commitment to conduct mining operations at the site by the end of the temporary cessation periods. Cotter relies on unsubstantiated and speculative assertions that the uranium market will return to favorable economic conditions.

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[37] May 16, 2007, Permit File Review Memorandum, enclosed, and located in permit file at http://bit.ly/2DRk956.

[38] In permit file at http://bit.ly/2BfZbd4.

9. Objection to temporary cessation renewal for Mineral Joe Claims, Permit No. M-1977-284

A permit for the Mineral Joe Claims was issued on June 16, 1978, to the Kelmine Corporation. The Kelmine Corporation ceased operations on March 15, 1984[39] and submitted a Notice of Temporary Cessation on Aug. 1, 1985.[40]

The Cotter Corporation acquired the Mineral Joe Claims in 1993. On December 20 of that year, Cotter requested that the status of temporary cessation be withdrawn and applied for "intermittent" status. The change was approved on Jan. 31, 1994.[41]

In its Dec. 20, 1993, application for intermittent status, Cotter describes "mining activities" that occurred on the Mineral Joe Claims since 1985. Cotter reported token mining production had occurred at the mine in 1987, when 900 tons of ore were mined; in 1988, when 1,107 tons of ore were mined; and in 1989, when 3,043 tons of ore were mined.[42] The Mineral Joe Claims operate in conjunction and in support of the JD-6 Mine, but are excluded from the U.S. Department of Energy Uranium Leasing Program that includes the other Cotter mines.

After acquiring the Mineral Joe in 1993, Cotter reported that it engaged in "mining activities" but did not produce ore. The reported activities were "mine evaluation, surveying, ground control, timber installation and repair, regular mine inspections, environmental assessment, stormwater assessment, sampling and disposal of transformers, electrical supply upgrade, inspection of escape-way and maintenance work performed on all access roads."[43] Notably, there was no production of ore.

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[39] March 22 1999 inspection report, in permit file at http://bit.ly/2mX72ru.
[40] Aug. 1, 1985, notice in permit file at http://bit.ly/2EWTQK0.
[41] See record at http://bit.ly/2DiWjOh.
[42] See application at http://bit.ly/2DloSe4.
[43] Id.

In its application for intermittent status in 1993, Cotter justifies the switch to intermittent status based on the token and minimal extraction that occurred in the mid-1980s. However, Cotter failed to continue to produce ore, even at token levels, after 1989.[44] Since that time, there has been no production at the Mineral Joe Claims at all, a period of inactivity that has lasted **over 28 years**.

In a Division review memorandum to the Department of Energy dated May 16, 2007, the Division noted the lack of production at the SR-11. "A letter from Cotter dated 6/21/05 states that the development and production at this mine would commence in July 2005. The development work was the driving of a new decline to access the ore body. The annual report dated January 2006 states that development at this mine ceased in November 2005. The reports do not indicate that or if there was any ore production during this brief period of activity. The other annual reports and inspection reports reviewed indicate that the site has been inactive over the remainder of the period of interest."[45]

The Mineral Joe Claims were reclassified from intermittent status and were again placed into temporary cessation effective Dec. 15, 2012.[46]

The objectors request that the Board deny Cotter's notice for another period of temporary cessation for the Mineral Joe Claims and order Cotter to initiate final reclamation pursuant to the MLRA's requirement that final reclamation of a mine must not be delayed for more than 10 years following the cessation of production. According to Division records, production ceased at the Mineral Joe Claims no later than 1989.

Cotter's notice of temporary cessation of Aug. 28, 2017[47] does not meet the requirements of Rule 1.13.5(3)(b) to provide an adequate explanation for why operations have not

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[44] See Cotter comments dated Jan. 25, 2013, in file at http://bit.ly/2DqtIuD.

[45] May 16, 2007, Permit File Review Memorandum, enclosed, and located in permit file at http://bit.ly/2DRk956.

[46] See notice at http://bit.ly/2BfB3Hi.

[47] In permit file at http://bit.ly/2DlQEXP.

resumed and reclamation has not begun. Cotter incorrectly relies on the unrelated DOE court injunction as an excuse to further delay reclamation and release of the permit.

Cotter's notice of temporary cessation does not meet the requirements of Rule 1.13.5(3)(c) by demonstrating a continued commitment to conduct mining operations at the site by the end of the temporary cessation periods. Cotter relies on unsubstantiated and speculative assertions that the uranium market will return to favorable economic conditions.

10. Objection to temporary cessation renewal for C-LP-21 Mine, Permit No. M-1977-305

Cotter Corporation was issued a permit for the C-LP-21 Mine on March 31, 1979. A little over a year later, the first period of temporary cessation was approved on Aug. 8, 1980, and then the second period was approved on July 23, 1985. After the 10-year period of temporary cessation ran out, as required by the MLRA, the LP-21 was reclassified with intermittent status on Aug. 31, 1990.[48]

In its May 2013 order, the Board authorized a third period for temporary cessation for the LP-21 Mine effective Dec. 15, 2012, ending the intermittent status the mine had benefitted from since 1990. According to that order, the mining activities conducted at the LP-21 included ground support work in 1995, 1998, 2000 and 2002; surface drilling in 1996; and additional drilling in 2010. But no production.[49]

According to the Division's most recent inspection report, from Sept. 12, 2017, final reclamation at the site was completed in 2003.[50]

The objectors request that the Board deny Cotter's application for another period of temporary cessation for the C-LP-21 Mine and order Cotter to initiate a release of the

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[48] See MLRB May 7, 2013, Findings of Fact, Conclusions of Law and Order, in permit file at http://bit.ly/2DkJCCP.
[49] Id.
[50] In permit file at http://bit.ly/2FT2PNw.

permit pursuant to the MLRA's requirement that final reclamation of a mine must not be delayed for more than 10 years. According to Division records, production ceased at the LP-21 in 1980, more than **37 years ago**.

Cotter's notice of temporary cessation of Aug. 28, 2017[51] does not meet the requirements of Rule 1.13.5(3)(b) to provide an adequate explanation for why operations have not resumed and reclamation has not begun. Cotter incorrectly relies on the unrelated DOE court injunction as an excuse to further delay reclamation and release of the permit. Cotter's notice of temporary cessation does not meet the requirements of Rule 1.13.5(3)(c) by demonstrating a continued commitment to conduct mining operations at the site by the end of the temporary cessation periods. Cotter relies on unsubstantiated and speculative assertions that the uranium market will return to favorable economic conditions.

The objectors support the Division's position as stated in its June 29, 2017, letter to Cotter Corporation notifying them that the LP-21 was not eligible for continued temporary cessation, was fully reclaimed and therefore at the end of the "life of the mine," and must initiate the process to release the permit.[52]

11. Objection to temporary cessation renewal for JD-9 Mine, Permit No. M-1977-306

Cotter Corporation received a permit to operate the JD-9 Mine on Sept. 30, 1979. The initial, first period of temporary cessation was approved on Aug. 8, 1980. The second period of temporary cessation was approved on July 23, 1985. At the end of that period in 1990, the JD-9 Mine should have been reclaimed but, instead, it was reclassified with intermittent status, which lasted until 2012.[53]

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[51] In permit file at http://bit.ly/2mVbKGa.
[52] In permit file at http://bit.ly/2mVSY1s.
[53] See MLRB May 7, 2013, Findings of Fact, Conclusions of Law and Order, in permit file at http://bit.ly/2DkJCCP.

The JD-9 was reclassified from intermittent status and entered a third period of temporary cessation effective Dec. 15, 2012. According to the May 2013 Board order in the matter, Cotter reported mining activities at the mine periodically in the 1990s. These included ground control work in 1991-92; surface drilling in 1991 and 1997; repair work on a vent hole in 1991 and 1992; installation of a power drop in 1992; and retimbering of the decline in 1997. However, no actual production of ore occurred, as was required under the MLRA to retain intermittent status during this period. the May 2013 Board order also cites the minimal return of production in 2003, stating "The Operator mined ore from the JD-9 Mine 2003 through 2006."[54]

At that time, Cotter was obligated by law to report the cessation of operations after production ceased in 2006, and even had a third period of temporary cessation been legitimately warranted, at least **a decade has passed** between the time the last mining occurred at the JD-9 and today.

The objectors request that the Board deny Cotter's notice for another period of temporary cessation for the JD-9 Mine and order Cotter to initiate final reclamation pursuant to the MLRA's requirement that final reclamation of a mine must not be delayed for more than 10 years following the cessation of production. According to Division records, production ceased at the JD-9 Mine no later than 2006.

Cotter's notice of temporary cessation of Nov. 22, 2017[55] does not meet the requirements of Rule 1.13.5(3)(b) to provide an adequate explanation for why operations have not resumed and reclamation has not begun. Cotter incorrectly relies on the unrelated DOE court injunction as an excuse to further delay reclamation and release of the permit.

Cotter's notice of temporary cessation does not meet the requirements of Rule 1.13.5(3)(c) by demonstrating a continued commitment to conduct mining operations at the site by the end of the temporary cessation periods. Cotter relies on unsubstantiated

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[54] See board order in permit file at http://bit.ly/2mT8vyh.

[55] In permit file at http://bit.ly/2Djt2TS.

and speculative assertions that the uranium market will return to favorable economic conditions.

12. Objection to temporary cessation renewal for CM-25 Mine, Permit No. M-1977-307

According to Division records, the CM-25 entered its first five-year period of temporary cessation on Aug. 8, 1980, then was renewed for a second period on July 25, 1985.[56] The Division's most recent inspection report for the CM-25, dated Sept. 12, 2017, notes that "final reclamation was completed at this site in February 2003."[57]

In its application for intermittent status, Cotter listed mining activities that had occurred at the CM-25 since 1980, including determining ore reserves, surface and underground drilling, mine mapping, feasibility studies, geological report preparation, ore sampling, timber repair and groundwater control work. Cotter also reported in comments to the Division that ground support work occurred at the CM-25 in 1992, 1993 and 1996-98; surface drilling occurred in 1991-94, 1996, and in 2010.[58] But no actual mining.

The objectors request that the Board deny Cotter's application for another period of temporary cessation for the CM-25 and order Cotter to initiate a release of the permit pursuant to the MLRA's requirement that final reclamation of a mine indicates that the life of the permit is concluded and the site must be returned to beneficial public use. According to Division records, production ceased at the SR-13A Mine in 1980, **more than 37 years ago, and the mine has been fully reclaimed since 2003**.

Cotter's July 31, 2017, notice of temporary cessation for the CM-25 does not meet the requirements of Rule 1.13.5(3)(b) to provide an adequate explanation for why operations have not resumed and reclamation has not begun.[59] Cotter incorrectly relies on the

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[56] See Jan. 22, 2013 comments in permit file at http://bit.ly/2DQ4vqt.
[57] Sept. 12, 2017 inspection in file at http://bit.ly/2mTB0gk.
[58] See Jan. 22, 2013 comments in permit file at http://bit.ly/2DQ4vqt.
[59] In permit file at http://bit.ly/2DOPu8h.

unrelated DOE court injunction as an excuse to further delay reclamation and release of the permit.

Cotter's notice of temporary cessation does not meet the requirements of Rule 1.13.5(3)(c) by demonstrating a continued commitment to conduct mining operations at the site by the end of the temporary cessation periods. Cotter relies on unsubstantiated and speculative assertions that the uranium market will return to favorable economic conditions.

The objectors support the Division's position as stated in its June 29, 2017, letter to Cotter Corporation notifying them that the CM-25 was not eligible for continued temporary cessation, was fully reclaimed and therefore at the end of the "life of the mine," and must initiate the process to release the permit.[60]

13. Objection to temporary cessation renewal for JD-6 Mine, Permit No. M-1977-310

Cotter received a permit to operate the JD-6 Mine on July 31, 1979. A year later, the mine was placed into temporary cessation, effective July 15, 1980. That status was renewed for a second five-year period starting on July 23, 1985. Then the ten years allowed by statute were up.[61]

Rather than reclaim the inactive JD-6 Mine, Cotter applied for, and was granted, intermittent status on June 25, 1990 and was allowed to delay final cleanup. According to the May 2013 Board order authorizing the reclassification, minimal mining activities were reported by Cotter to justify the intermittent status the mine benefitted from during these years. Those activities included the movement of waste material in 1995 and 1996; ground support work in 1995 through 1998; storm water diversion construction in 1996; and replacement of a pump in 1998.[62]

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[60] In permit file at http://bit.ly/2mQKNTm.

[61] See MLRB May 7, 2013, Findings of Fact, Conclusions of Law and Order, in permit file at http://bit.ly/2DkJCCP.

[62] Id.

Apparently, little occurred at the JD-6 until 2004 when the board order noted, "The Operator resumed mineral production in 2004 and 2005."[63] The date of last activity was listed as February 2006 in Cotter's most recent annual report for the JD-6, filed on July 31, 2017.[64] In its memo reviewing the status of uranium mines between 2001 and 2007, the Division noted in 2007 that, "Inspection reports from 2005 and 2006 indicated that this mine area was active in 2005, but ceased activity late in the year or early in 2006. There are no production numbers in the annual reports at this mine."[65] Although Cotter claims to have produced some ore at the JD-6 in late 2005 through February 2006, this brief output does not represent a return to active mining.

Thus, the JD-6 Mine has not produced ore since 2006 and ore production immediately before the cessation of operations was minimal and token in nature. Cotter summarized those mining activities at JD-6 in comments to the Division in 2012, noting the Division memorandum's notation of a load-out operation and the presence of 50 tons of ore on the stockpile on April 5, 2012. Cotter also cites the Division's Oct. 5, 2005, inspection documenting the presence of 75 tons of stockpiled ore.[66]

The JD-6 Mine went dormant in 2006. It has been **idled for more than 10 years**. The law now requires that it be reclaimed. The objectors request that the Board deny Cotter's notice for another period of temporary cessation for the JD-6 Mine and order Cotter to initiate final reclamation pursuant to the MLRA's requirement that final reclamation of a mine must not be delayed for more than 10 years following the cessation of production.

Cotter's notice of temporary cessation of Nov. 22, 2017[67] does not meet the requirements of Rule 1.13.5(3)(b) to provide an adequate explanation for why operations have not

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[63] Id.

[64] Annual report in permit file at http://bit.ly/2mWeOly.

[65] May 16, 2007, Permit File Review Memorandum, enclosed, and located in permit file at http://bit.ly/2DRk956.

[66] See p 6 in Cotter response, in permit file at http://bit.ly/2Dk12Q2.

[67] See Nov. 22, 2017, notice of temporary cessation in permit file at http://bit.ly/2Bhl0Jk.

resumed and reclamation has not begun. Cotter incorrectly relies on the unrelated DOE court injunction as an excuse to further delay reclamation and release of the permit.

Cotter's notice of temporary cessation does not meet the requirements of Rule 1.13.5(3)(c) by demonstrating a continued commitment to conduct mining operations at the site by the end of the temporary cessation periods. Cotter relies on unsubstantiated and speculative assertions that the uranium market will return to favorable economic conditions.

14. Objection to temporary cessation renewal for SM-18 Mine, Permit No. M-1978-116

Cotter's permit to operate the SM-18 Mine was issued on Oct. 31, 1979.[68] The SM-18 entered its first period of temporary cessation on Aug. 8, 1980, and the status was renewed in 1985 for a second period of temporary cessation.[69] At the end of this period, Cotter applied for intermittent status and avoided the legal mandate to fully reclaim the mine within ten years of the cessation of operations.

In the July 26, 1990, application for intermittent status from Cotter, the mining support activities that occurred at the SM-18 since 1980 are listed, including "determining ore reserves, surface drilling, geologic report preparation, ground control in preparation for mining, resurfacing the portal area for drainage control in preparation for mining, pump and pump line repair in preparation for mining, ore sampling, roadway repair work in the decline in preparation for mining, and mine dewatering in preparation for mining." These reports do not include the extraction of ore.

In reporting on its mining activities during the mine's period of intermittent status after 1990 in correspondence with the Division, Cotter noted the construction of a pond in 1994; surface drilling in 1997, timber repair in the decline in 1999; and the release of five

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[68] See permit in file at http://bit.ly/2DSzIJB.
[69] In permit file at http://bit.ly/2DveWly.

reclaimed acres in 2004. Cotter reported that it recommenced ore production at the SM-18 Mine in mid-March 2005 and continued through early 2006. [70]

In its most recent annual report,[71] 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 submitted in 2012 as part of its Environmental Protection Plan approval, Cotter does not provide a more detailed history or details of prior operations at the SM-18.[72]

In its June 29, 2017, letter to Cotter notifying them of the change to SM-18's status, the Division noted that its "records and inspections indicate a lack of mining operations or other activities which are defined in Rule 1.13.2." The Division determined that a retroactive date of a third period of temporary cessation should be applied effective Dec. 12, 2012.[73] In applying for the renewal of that status now, possibly resulting in a fourth period of temporary cessation for the SM-18 is only an attempt by Cotter to avoid the final reclamation requirements for inactive mines. The SM-18 Mine **last produced ore in 2006**, according to Cotter's own reports. The ten-year statutory limit has passed and it is now time to begin final reclamation of the mine.

The objectors request that the Board deny Cotter's notice for another period of temporary cessation for the SM-18 Mine and order Cotter to initiate final reclamation pursuant to the MLRA's requirement that final reclamation of a mine must not be delayed for more than 10 years following the cessation of production.

Cotter's notice of temporary cessation of July 31, 2017[74] does not meet the requirements of Rule 1.13.5(3)(b) to provide an adequate explanation for why operations have not resumed and reclamation has not begun at the SM-18. Cotter incorrectly relies on the

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[70] See comments in permit file at http://bit.ly/2mSZ02h.
[71] Available in the permit file online at http://bit.ly/2EXGm0C.
[72] See Exhibit D EPP amendment application in the permit file online at http://bit.ly/2DsjB8L.
[73] In permit file at http://bit.ly/2DqqaIP.
[74] In permit file at http://bit.ly/2DlJinp.

unrelated DOE court injunction as an excuse to further delay reclamation and release of the permit.

Cotter's notice of temporary cessation does not meet the requirements of Rule 1.13.5(3)(c) by demonstrating a continued commitment to conduct mining operations at the site by the end of the temporary cessation periods. Cotter relies on unsubstantiated and speculative assertions that the uranium market will return to favorable economic conditions.

15. Objection to temporary cessation renewal for JD-7 Pit, Permit No. M-1979-094-HR

Cotter Corporation was issued a permit for the JD-7 Pit on Dec. 14, 1979. On April 2, 1981, the JD-7 Pit was approved for its first period of temporary cessation, and that status was renewed for another five years on June 27, 1986. When the initial ten years of temporary cessation ran out, the Board then approved the JD-7 for intermittent status on Feb. 21, 1991.[75] Since its permitting, the JD-7 mine site was developed and overburden removed but ore has never been produced, a period of inactivity that has lasted over **37 years.** It is time to finally clean it up.

In its May 2013 order authorizing the delay of final reclamation of the JD-7 open pit mine by allowing yet another period of temporary cessation, the Board noted the mining activities that had occurred at the JD-7 through the years. Those including in-pit drilling from 1991-93 and between 1996 and 2004; stormwater diversion work in 2006; construction of a drill road, and rehabilitation of the storm water pit dam and a ditch in 2011.[76]

No mining, though.

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[75] See p. 6 in MLRB May 7, 2013, Findings of Fact, Conclusions of Law and Order, in permit file at http://bit.ly/2DkJCCP.
[76] Id.

In their latest annual report from Nov. 21, 2017, Cotter stated that the last activity to have occurred at the JD-7 was in 1982.[77] In 2013 comments to the Division, Cotter noted how "production activities were **paused** in April 1981 as a result of market conditions."[78]

The objectors request that the Board bring this permanent pause to an end and deny Cotter's requests to renew temporary cessation status for the JD-7 Pit and order Cotter to initiate final reclamation pursuant to the MLRA's requirement that final reclamation of a mine must not be delayed for more than 10 years following the cessation of production.

Cotter's notice of temporary cessation of Nov. 22, 2017[79] does not meet the requirements of Rule 1.13.5(3)(b) to provide an adequate explanation for why operations ore production has not occurred and reclamation has not begun. Cotter incorrectly relies on the unrelated DOE court injunction as an excuse to further delay reclamation and release of the permit.

Cotter's notice of temporary cessation does not meet the requirements of Rule 1.13.5(3)(c) by demonstrating a continued commitment to conduct mining operations at the site by the end of the temporary cessation periods. Cotter relies on unsubstantiated and speculative assertions that the uranium market will return to favorable economic conditions.

Conclusion:

Denial of Cotter Corporation's requests to extend temporary cessation status at the eight mines in this objection is consistent with Colorado law. An order for final reclamation will begin the process of fulfilling Colorado's legal mandate to return mined lands to a use beneficial to the public. The Board should fully implement the requirements of the

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[77] See report in file at http://bit.ly/2DxbO8L.
[78] See p 3 in comments in permit file at http://bit.ly/2BfV3Kd.
[79] In permit file at http://bit.ly/2DrV183.

Mined Land Reclamation Act and proceed with orders to enact final reclamation and closure of these mines.

We appreciate your consideration of these comments.

Respectfully submitted,

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STATE OF COLORADO

DIVISION OF RECLAMATION, MINING AND SAFETY
Department of Natural Resources

1313 Sherman St., Room 215
Denver, Colorado 80203
Phone: (303) 866-3567
FAX: (303) 832-8106

Permit #: M-1977-310 Confidential?: NO
Doc. Type: Mining Status
From: DRMS To: DOE
Doc. Name: Permit File Review and Report
Doc. Date: 5-16-2007
Specialist: ACS

COLORADO DIVISION OF RECLAMATION MINING & SAFETY

DATE: May 16, 2007

TO: James Franco, U.S. Department of Energy

FROM: Allen Sorenson A. S.

RE: ***Permit File Review for Selected Uranium Mines, Mining Activity Status from 2001 to Date***

Per your request, I reviewed the annual reports for the following mines:

Permittee	Mine Name	DOE Lease	Last Report	County	Township	Range	Section
Gold Eagle Mining, Inc.	C-JD-5 Mine	C-JD-5	6/16/06	Montrose	46N	17W	21
Gold Eagle Mining, Inc.	Burros Mine	C-SR-13	11/29/06	San Miguel	44N	18W	30
Gold Eagle Mining, Inc.	Hawkeye Mine	C-SR-13	2/15/07	San Miguel	44N	18W	32
Gold Eagle Mining, Inc.	Ellison Mine	C-SR-13	2/15/07	San Miguel	44N	18W	30

The annual reports for each of the four mines listed above for the period from the beginning of 2001 to the date of the most recent reports indicate that no ore production has occurred.

Permittee	Mine Name	DOE Lease	Last Report	Enclosures	County	Township	Range	Section
Cotter Corp.	Mineral Joe Claims	???	6/5/06	Yes	Montrose	46N	17W	21
Cotter Corp.	C-LP-21 Mine	C-LP-21	3/21/07	Yes	Montrose	47N	17W	22
Cotter Corp.	JD-9 Mine	C-JD-9	11/7/06	Yes	Montrose	46N	17W	31
Cotter Corp.	CM-25 Mine	C-CM-25	3/21/07	No	Montrose	47N	17W	4
Cotter Corp.	C-JD-7 Mine	C-JD-7	4/23/07	No	Montrose	46N	17W	16
Cotter Corp.	JD-6 Mine	C-JD-6	7/17/06	Yes	Montrose	46N	17W	22
Cotter Corp.	SR-13A Mine	C-SR-13A	8/28/06	No	San Miguel	44N	18W	30
Cotter Corp.	Ike No. 1 Mine	C-SR-11	1/29/07	Yes	San Miguel	43N	19W	18
Cotter Corp.	SM-18 Mine	C-SM-18	9/25/06	Yes	Montrose	48N	17W	22
Cotter Corp.	JD-7 Pit	C-JD-7 &7A	12/5/06	No	Montrose	46N	17W	16
Cotter Corp.	C-JD-8 Mine	C-JD-8	9/25/06	Yes	Montrose	46N	17W	19

The annual reports for each of the 11 mines listed above for the period from the beginning of 2001 to the date of the most recent reports were reviewed. Selected inspection reports for these mines were also reviewed. The highlights from these reviews are:

Mineral Joe Claims: Inspection reports from 2005 (enclosed) indicated that this mine area was active, but only for use as access to the JD-6 ore. There are no production numbers in the annual reports reviewed for this mine.

C-LP-21 Mine: The annual reports reviewed indicated that this mine has been inactive; no production numbers in the reports. An inspection report from 2006 (enclosed) states that this mine has not operated in recent years.

JD-9 Mine: The August 2004 and August 2005 annual reports (enclosed) state that the mine is active, but there are no production numbers in any of the reports reviewed. The 3/24/05 inspection report (enclosed) states that the mine is in operation after a long period of inactivity. The 10/5/05 inspection report (enclosed) states that the mine is in full production. The 4/5/06 inspection report (enclosed) states that the mine had recently been in production, but that

production had been suspended at the time of the inspection. The 2/7/07 inspection report (enclosed) notes no activity at the site.

CM-25 Mine: The annual reports and inspection reports reviewed indicate that the site has been inactive over the period of interest.

C-JD-7 Mine: The annual reports and inspection reports reviewed indicate that the site has been inactive over the period of interest.

JD-6 Mine: Inspection reports from 2005 and 2006 (enclosed) indicated that this mine area was active in 2005, but ceased activity late in the year or early in 2006. There are no production numbers in the annual reports reviewed for this mine.

SR-13A Mine: The annual reports and inspection reports reviewed indicate that the site has been inactive over the period of interest.

Ike No. 1 Mine: A letter from Cotter dated 6/21/05 (enclosed) states that development and production at this mine would commence in July 2005. The development work was the driving of a new decline to access the ore body. The annual report dated January 2006 (enclosed) states that development at his mine ceased in November 2005. The reports do not indicate that or if there was any ore production during this brief period of activity. The other annual reports and inspection reports reviewed indicate that the site has been inactive over the remainder of the period of interest.

SM-18 Mine: Following the approval of a permit amendment on November 17, 2004, Cotter commenced mining on this lease. The September 2005 annual report (enclosed) states that the mine was in production; the September 2006 annual report (enclosed) states that mining had ceased. The 5/4/05 inspection report (enclosed) describes mine development that was occurring. The 10/5/05 inspection report (enclosed) states that the mine was in full production. The 4/5/06 inspection report states that production had ceased. The other annual reports and inspection reports reviewed indicate that the site has been inactive over the remainder of the period of interest. No ore production quantities are provided in any of the reports reviewed.

JD-7 Pit: The annual reports and inspection reports reviewed indicate that the site has been inactive over the period of interest.

C-JD-8 Mine: The September 2005 annual report (enclosed) states that the site was being mined; the September 2006 annual report states that mining had ceased. The 6/16/05 inspection report (enclosed) states that development work was occurring. The 10/5/05 inspection report (enclosed) states that the mine was in full production. The 4/5/06 inspection report (enclosed) states that mining had ceased. The other annual reports and inspection reports reviewed indicate that the site has been inactive over the remainder of the period of interest. No ore production quantities are provided in any of the reports reviewed.

The permits administered by the Colorado Division of Reclamation, Mining, and Safety require environmental protection and mined land reclamation. Under these permits, operators are not required to provide ore production data, nor are they required to report specific dates of mine operation. The information in this memo provides mine operation information as it exists in the permit files for the period from 1/1/2001 to date, but this information may not be comprehensive in regard to all days that the mines may have been operated over that period.

enclosure(s)

STATE OF COLORADO

DIVISION OF RECLAMATION, MINING AND SAFETY
Department of Natural Resources

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dmc, grm

COLORADO DIVISION OF RECLAMATION MINING & SAFETY

May 10, 2013

Cotter Corporation
P.O. BOX 700
Nucla, CO 81424

Re: Findings of Fact, Conclusions of Law and Order, Cotter Corporation
File No. M-1977-305, M-1977-306, M-1977-310, M-1977-311, M-1977-451, and M-1979-094HR

On May 7, 2013 the Mined Land Reclamation Board signed the enclosed Board Order for the above captioned operation. We strongly advise that you read this document carefully since it may contain provisions which must be satisfied by specific dates to avoid future Board actions.

Sincerely,

Sitira Pope

Sitira Pope
Secretary to the Board

Enclosure(s)

CERTIFIED MAIL NO.
7010 1060 0001 0936 3506
7010 1060 0001 0936 4169

Cc's
Julie Murphy
John Roberts
Charlotte Neitzel
Robert Tuchman

BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

IN THE MATTER OF COTTER CORPORATION (N.S.L.)'S NOTICES OF TEMPORARY CESSATION, Permit Nos. M-1977-305, M-1977-306, M-1977-310, M-1977-311, M-1977-451, and M-1979-094HR

THIS MATTER came before the Mined Land Reclamation Board ("Board") on April 17, 2013 for a hearing to consider the notices of temporary cessation of Cotter Corporation (N.S.L.) ("Operator") for the following mines: LP-21 Mine, Permit No. M-1977-305; JD-9 Mine, Permit No. M-1977-306; JD-6 Mine, Permit No. M-1977-310; SR-13A Mine, Permit No. M-1977-311; SR-11 Mine, Permit No. M-1977-451; and JD-7 Mine, Permit No. M 1979-094HR (collectively referenced herein as the "the Mines"). Robert Tuchman, Esq. and Glen Williams appeared on behalf of the Operator. Jeff Parsons, Esq. and Jennifer Thurston appeared on behalf of objector Information Network for Responsible Mining ("INFORM"). Assistant Attorney General Julie M. Murphy and G. Russell Means appeared on behalf of the Division of Reclamation, Mining and Safety ("Division").

The Board, having considered the parties' written submittals, presentations and testimony, and being otherwise fully informed of the facts in the matter, enters the following:

FINDINGS OF FACT

LP-21 Mine, Permit No. M-1977-305

1. The Operator has a 112(d)-1 reclamation permit for a 13.2-acre uranium and vanadium underground mining operation. The site, known as the LP-21 Mine (permit number M-1977-305), is located in Section 22, Township 47 North, Range 17 West, 10th Principal Meridian, in Montrose County, Colorado.

2. On March 31, 1979, the Board issued Permit No. M-1977-305 for the LP-21 Mine.

3. On August 27, 1980, the Division received a Notice of Temporary Cessation for the LP-21 Mine. The Notice of Temporary Cessation was approved, reclassifying the LP-21 Mine from active to temporary cessation status, effective August 8, 1980. No party appealed the Division's reclassification of the LP-21 Mine to temporary cessation status.

4. On May 20, 1985, the Division received the Second Notice of Temporary Cessation for the LP-21 Mine; the Division received additional supporting material for the Second Notice of Temporary Cessation on July 23, 1985. The Second Notice of Temporary Cessation was approved.

5. In July 1990, the Operator submitted Technical Revision 001 for the LP-21 Mine to reclassify it to intermittent status. The Operator's application reported approximately 75,200 tons in economic reserves remaining in the LP-21 Mine.

6. On August 31, 1990, the Division approved Technical Revision 001, reclassifying the LP-21 Mine to intermittent status.

7. No party appealed the Division's approval of the LP-21 Mine intermittent status reclassification.

8. From 1990 through 2012, the Division conducted over ten inspections of the LP-21 Mine.

9. The Operator conducted mining operations at the LP-21 Mine after its permit status was reclassified to intermittent status, including but not limited to (a) ground support work in 1995, 1998, 2000, and 2002; (b) surface drilling in 1996; and (c) additional drilling in 2010.

JD-9 Mine, Permit No. M-1977-306

10. The Operator has a 112(d)-1 reclamation permit for a 11.1-acre uranium and vanadium underground mining operation. The site, known as the JD-9 Mine (permit number M-1977-306), is located in Section 31, Township 46 North, Range 17 West, 10th Principal Meridian, in Montrose County, Colorado.

11. On September 30, 1979, the Board issued Permit No. M-1977-306 for the JD-9 Mine.

12. On August 27, 1980, the Division received a Notice of Temporary Cessation for the JD-9 Mine. The Notice was approved reclassifying the JD-9 Mine from active to temporary cessation status effective August 8, 1980.. No party appealed the Division's reclassification of the JD-9 Mine to temporary cessation status.

13. On May 20, 1985, the Division received the Second Notice of Temporary Cessation for the JD-9 Mine and additional supporting material on July 23, 1985, which was approved.

14. In July 1990, the Operator submitted Technical Revision 001 for the JD-9 Mine. The Operator's application reported approximately 143,100 tons in economic reserves remaining in the JD-9 Mine.

15. On August 31, 1990, the Division approved Technical Revision 001, which reclassified the JD-9 Mine to intermittent status. No party appealed the Division's approval of the JD-9 intermittent status reclassification.

16. From 1990 through 2012, the Division conducted over seventeen inspections of the JD-9 Mine and noted major mining operations were performed in 2005.

17. The Operator conducted mining operations at the JD-9 Mine after its permit status was revised to intermittent status, including but not limited to: (a) ground control work in 1991 and 1992; (b) surface drilling in 1991 and 1997, repair work on a vent hole in 1991 and 1992; (c) installation of a power drop from the surface to the 1400 area was in 1992; and (d) re-timbering the decline in 1997. Also, Cotter amended its permit in 1994 to include construction of new settling ponds, which were later built. The Operator mined ore from the JD-9 Mine 2003 through 2006.

JD-6 Mine, Permit No. M-1977-310

18. The Operator has a 110(d) reclamation permit for a 6.24-acre uranium and vanadium underground mining operation. The site, known as the JD-6 Mine (permit number M-1977-310), is located in Section 22, Township 46 North, Range 17 West, 10th Principal Meridian, in Montrose County, Colorado.

19. On July 31, 1979, the Board issued Permit No. M-1977-310 for the JD-6 Mine.

20. On July 17, 1980, the Division received the Notice of Temporary Cessation for the JD-6 Mine. The Notice was approved reclassifying the JD-6 Mine from active to temporary cessation status effective July 15, 1980. No party appealed the Division's reclassification of the JD-6 Mine to temporary cessation status.

21. On May 20, 1985, the Division received the Second Notice of Temporary Cessation for the JD-6 Mine and additional supporting material on July 23, 1985, which was approved.

22. On May 10, 1990, the Operator applied for intermittent status for the JD-6 Mine. The Operator's application reported approximately 59,500 tons in economic reserves remaining in the JD-6 Mine.

23. On June 25, 1990, the Board approved Technical Revision 001, which reclassified the JD-6 Mine to intermittent status. No party appealed the Board's approval of the JD-6 intermittent status reclassification.

24. From 1990 through 2012, the Division conducted over fifteen inspections of the JD-6 Mine and noted major mining operations were performed in 2005.

25. The Operator conducted mining operations at the JD-6 Mine after its permit status was revised to intermittent status, including but not limited to: (a) movement of waste material in 1995 and 1996; (b) ground support work from 1995 through 1998; (c) storm water diversions constructed in 1996; and (d) replacement of a pump in in 1998. The Operator resumed mineral production in 2004 and 2005.

SR-13A Mine, Permit No. M-1977-311

26. The Operator has a 110(d) reclamation permit for a 9.74-acre uranium and vanadium underground mining operation. The site, known as the SR-13A Mine (permit number M-1977-311), is located in Section 30, Township 44 North, Range 18 West, 10th Principal Meridian, in San Miguel County, Colorado.

27. On August 31, 1979, the Board issued Permit No. M-1977-311 for the SR-13A Mine.

28. On August 27, 1980, the Division received the Notice of Temporary Cessation for the SR-13A Mine. The Notice was approved reclassifying the SR-13A Mine from active to temporary cessation status effective August 8, 1980. No party appealed the Division's reclassification of the SR-13A Mine to temporary cessation status.

29. On May 20, 1985, the Division received the Second Notice of Temporary Cessation for the SR-13A Mine and additional supporting material on July 23, 1985, which was approved.

30. On July 26, 1990, the Operator submitted Technical Revision 001 for the SR-13A Mine. The Operator's application reported approximately 8,200 tons in economic reserves remaining in the SR-13A Mine.

31. On August 31, 1990, the Division approved Technical Revision 001, which reclassified the SR-13A Mine to intermittent status. No party appealed the Division's approval of the SR-13A intermittent status reclassification.

32. From 1993 through 2012, the Division conducted eight inspections of the SR-13A Mine. In 2003, the Division released a fully-reclaimed portion of the SR-13A Mine.

33. The Operator conducted mining operations at the SR-13A Mine after its permit status was revised to intermittent status, including but not limited to (a) underground drilling in 1991, 1992, and 1994; (b) ground support work in 1993; and (c) surface drilling in 1997 and 2010. The waste rock dump was re-pocked in 2010.

SR-11 Mine, Permit No. M-1977-451

34. The Operator has a 112(d)-1 reclamation permit for a 13-acre uranium and vanadium underground mining operation. The site, known as the SR-11 Mine (permit number M-1977-451), is located in Section 8, Township 43 North, Range 19 West, 10th Principal Meridian, in Montrose County, Colorado.

35. On February 15, 1979, the Board issued Permit No. M-1977-451 for the Ike Mine.

36. On December 23, 1981, the Division reclassified the Ike Mine from active to temporary cessation status. No party appealed the Division's reclassification of the Ike Mine to temporary cessation status.

37. On November 20, 1986, the Division received the Second Notice of Temporary Cessation for the Ike Mine, which the Division approved on November 28, 1986.

38. On July 18, 1990, Cotter submitted an application to (a) convert Permit No. M-1977-451 from a limited impact operation to regular operations, (b) include additional land in the permit area (collectively referred to as the "SR-11 Mine"), and (c) reclassify the site from temporary cessation to intermittent status ("CN-01"). CN-01 estimated ore production from the SR-11 Mine to be approximately 34,000 tons per year for nine to ten years.

39. The Board approved CN-01 on October 18, 1990. No party appealed the Board's approval of the SR-11 Mine intermittent status reclassification.

40. From 1990 through 2012, the Division conducted multiple inspections of the SR-11 Mine.

41. The Operator conducted mining operations at the SR-11 Mine after it was reclassified to intermittent status, including but not limited to: (a) surface

drilling on the expanded permit area, 1991-1994 and 1996-2002; (b) construction of the SR-11 Mine's portal and waste dump followed by development of the main drift in 2005; (c) construction of berms and storm water runoff basins; and (d) pocking the mine waste dump at the SR-11 Mine and working on a lower storm water catchment berm in 2010 and 2011.

JD-7 Mine, Permit No. M-1979-094HR ✓

42. The Operator has a 112(d)-3 reclamation permit for a 650-acre uranium and vanadium underground mining operation. The site, known as the JD-7 Mine (permit number M-1979-094HR), is located in Section 16, Township 46 North, Range 17 West, 10th Principal Meridian, in Montrose County, Colorado.

43. On December 14, 1979, the Board issued Permit No. M-1979- 094HR for the JD-7 Mine that is located in Montrose County.

44. On April14, 1981, the Division approved the Notice of Temporary Cessation for the JD-7 Mine and reclassified the JD-7 Mine from active to temporary cessation status effective April 2, 1981. No party appealed the Division's reclassification of the JD-7 Mine to temporary cessation status.

45. On June 27, 1986, the Division received the Second Notice of Temporary Cessation for the JD-7 Mine, which was approved.

46. On or about February 13, 1991, the Operator submitted Technical Revision 02 for the JD-7 Mine. The Operator's application reported approximately 623,700 tons in economic reserves remaining in the JD-7 Mine.

47. On February 25, 1991, the Board approved Technical Revision 02 and reclassified the JD-7 Mine in intermittent status. No party appealed the Board's approval of the JD-7 intermittent status reclassification.

48. From 1991 through 2012, the Division conducted ten inspections of the JD-7 Mine.

49. The Operator conducted mining operations at the JD-7 Pit Mine after its permit status was revised to intermittent status, including but not limited to: (a) in-pit drilling, 1991-1993 and 1996-2004; (b) storm water diversion work in the pit in 2006; and (c) construction of a drill road in the JD-7 pit, and rehabilitation of the storm water pit dam and the upper diversion ditch in 2011.

Procedural History and Findings Related to the Notices of Temporary Cessation

50. In 2011 and in response to citizen concerns that certain intermittent status mines were improperly classified, the Division undertook a programmatic review of all intermittent status hard-rock mines. The programmatic review confirmed that some intermittent status mines were improperly classified. The Division sent a form letter to all operators of intermittent status mines in January of 2012 requiring the operator to either (1) demonstrate each mine's compliance with the requirements of intermittent status in the mine's annual report or (2) request reclassification of the mine's status. The Division sent a separate form letter dated January 24, 2012, to the Operator for each of the Mines.

51. On October 1, 2012, the Division received from the Operator Environmental Protection Plans and amendment applications for the Mines.

52. On December 14, 2012, the Division received a separate Notice of Temporary Cessation ("Notice of TC") for each of the Mines. Each Notice of TC identified a December 15, 2012 effective date and confirmed that ongoing maintenance activities would occur as required by the temporary cessation status.

53. As required by the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal, and Designated Mining Operations ("Rules"), Rule 1.13.6(1), the Division sent letters notifying Montrose and San Miguel counties of the appropriate Notices of TC on December 18, 2012.

54. The Division placed the Notices of TC for the Mines on the agenda for the Board's February meeting in accordance with Rule 1.13.6(1).

55. The Division received a separate objection letter from INFORM to each Notice of TC on February 12, 2013, which timely requested a Board hearing on all six Notices of TC ("Objection Letters"). The six Objection Letters raise substantially similar objections to the Operator's six Notices of TC for the Mines.

56. In response to the Objection Letters, a Board hearing was scheduled for March 13, 2013. The Board continued the hearing date to April 17, 2013, in response to a joint request for continuance from the Division, the Operator, and INFORM.

57. Valuable mineral reserves remain in each of the Mines. The Operator temporarily ceased mining operations at the Mines due to declining market conditions effective December 15, 2012; the Operator intends to resume the mining operation at such time that mineral prices improve.

58. The Operator's Notice of TC for each of the Mines properly and timely requested that the Division reclassify the Mines from intermittent status to temporary cessation status effective December 15, 2012.

59. The Operator has conducted "mining operations" at each of the Mines since the Mines were reclassified as intermittent status in 1990-1991.

60. The Division, the Operator, and INFORM prepared a Proposed Stipulated Prehearing Order that was submitted to the Board at the April 17, 2013 hearing. The Board accepted the Proposed Stipulated Prehearing Order as submitted by the parties.

CONCLUSIONS OF LAW

61. The Board has jurisdiction over the Operator and this matter pursuant to the Mined Land Reclamation Act, Article 32 of Title 34, C.R.S. ("Act").

62. INFORM bears the burden of proof pursuant to Rule 2.8.1(1).

63. If an operator plans to, or does, temporarily cease production of the mining operation for one hundred days or more, the operator must file with the Division a Notice of Temporary Cessation in writing. C.R.S. § 34-32-103(6)(a)(II); Rule 1.13.5(1) and (2). The Operator's Notice of TC complied with Rule 1.13.5.

64. Pursuant to Rule 1.13.6(1), upon receipt of the submission per Rule 1.13.5, the Division must place a Notice of Temporary Cessation on the agenda of the next regular Board meeting and give notice by mail to the operator, the county, and any municipalities within two (2) miles of the operation. The Division properly placed the Notice of TC on the Board's next regular meeting agenda and provided the notice required by Rule 1.13.6.

65. Under Rule 1.13.6(2), the Board, at its meeting and in consultation with the operator and any other person who demonstrates that such person is directly and adversely affected or aggrieved and whose interest is entitled to legal protection under the Act, may take whatever action the Board deems necessary and authorized by law, including but not limited to: acceptance of the Notice of Temporary Cessation as submitted; acceptance of the Notice of Temporary Cessation with modifications and other necessary activities as ordered by the Board; determination that the mining operation is not in a state of temporary cessation; continuance of the matter for another month or more to allow the Operator to revise the Notice of Temporary Cessation and/or to allow the Division to conduct a site inspection or otherwise review the matter as necessary.

66. Under section 34-32-103(8), C.R.S., "mining operation" means "development or extraction of a mineral from its natural occurrences on affected land" including, but not limited to, open mining, in situ mining, in situ leach mining, surface operations, the disposal of refuse from underground mining, in situ mining, in situ leach mining, and transportation, concentrating, milling, evaporation, and other processing. The Operator's activities at the Mines after each Mine was converted to intermittent status constituted mining operations.

ORDER

The Board ACCEPTS the Operator's Notice of Temporary Cessation, as submitted, for each of the following mines: LP-21 Mine (Permit No. M-1977-305); JD-9 Mine (Permit No. M-1977-306); JD-6 Mine (Permit No. M-1977-310); SR-13A Mine (Permit No. M-1977-311); SR-11 Mine (Permit No. M-1977-451); and JD-7 Mine (Permit No. M 1979-094HR).

DONE AND ORDERED this 7 day of May 2013

FOR THE COLORADO MINED LAND RECLAMATION BOARD

Thomas E. Brubaker, Chair

NOTICE OF APPEAL RIGHTS

This order becomes effective and final upon mailing. Any party adversely affected or aggrieved by agency action may commence an action for judicial review by filing a notice of appeal with the district court within thirty (30) days after the effective date of this order, pursuant to section 24-4-106, C.R.S. (2012). In the event that an appeal is filed, designations of record made in accordance with section 24-4-106(6), C.R.S. should be served on the Board at: 1313 Sherman Street, Room 215, Denver, CO 80203, Attention: Sitira Pope.

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 10th day of May 2013 addressed as follows:

Cotter Corporation
P.O. BOX 700
Nucla, CO 81424

Charlotte L. Neitzel
Robert Tuchman
1700 Lincoln St., Suite 4100
Denver, CO 80203-4541

By inter-office or electronic mail to:

G. Russell Means
Division of Reclamation, Mining & Safety
Grand Junction Field Office
101 South 3rd, Suite 301
Grand Junction, CO 81501

By intra-office or electronic mail to:

John J. Roberts
Senior Assistant Attorney General
Colorado Department of Law
Business and Licensing Section
1300 Broadway, 8th Floor
Denver, CO 80203

Julie M. Murphy
Assistant Attorney General
Colorado Department of Law
Natural Resources Section
1300 Broadway, 7th Floor
Denver, CO 80203

Sylvia Rupe

Consolidated Annual Report (CAR) is to gather narrative, financial and performance data as required by the reauthorized Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV) (20 U.S. C. 2301 *et seq.* As amended by Pub. L. 109–270). OCTAE staff will determine each States compliance with basic provisions of Perkins IV and the Education Department General Administrative Regulations (34 CFR part 80.40 [Annual Performance Report] and Part 80.41 [Financial Status Report]). OCTAE staff will review performance data to determine whether, and to what extent, each State has met its State adjusted levels of performance for the core indicators described in section 113(b)(4) of Perkins IV. Perkins IV requires the Secretary to provide the appropriate committees of Congress copies of annual reports received by the Department from each eligible agency that receives funds under the Act.

Dated: May 6, 2014.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–10755 Filed 5–9–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Record of Decision for the Uranium Leasing Program Programmatic Environmental Impact Statement

AGENCY: Office of Legacy Management, Department of Energy.

ACTION: Record of Decision.

SUMMARY: The U.S. Department of Energy (DOE) announces its decision to continue management of the Uranium Leasing Program (ULP) for 31 lease tracts for the next 10 years, consistent with DOE's preferred alternative identified in the Final Uranium Leasing Program Programmatic Environmental Impact Statement (Final ULP PEIS) (DOE/EIS–0472). DOE prepared the Final ULP PEIS to evaluate the reasonably foreseeable environmental impacts, including the site-specific impacts, of the range of reasonable alternatives for the management of the ULP. Under the ULP, DOE administers 31 tracts of land covering an aggregate of approximately 25,000 acres (10,000 ha) in Mesa, Montrose, and San Miguel Counties in western Colorado for exploration, mine development and operations, and reclamation of uranium mines. There are currently 29 tracts that have been leased; the two other tracts have not been leased. Analyses in the Final ULP PEIS were based on site-specific information available on the 31 lease tracts (including current lessee information and status, size of each lease tract, previous mining operations that occurred, location of existing permitted mines and associated structures, and other environmental information) and additional information on uranium mining from other references and cooperating agency input. As plans for exploration, mine development and operation, or reclamation are submitted by the lessees to DOE for approval, further National Environmental Policy Act (NEPA) analyses will be prepared for each plan and will be tiered from the analyses contained in the Final ULP PEIS.

"The 31 leases currently in existence" under the ULP are stayed by an Order issued by the U.S. District Court for the District of Colorado (*Colorado Environmental Coalition* v. *DOE*, 819 F. Supp. 2d 1193, 1224 (D. Colo. 2011)). The Court also enjoined DOE from issuing any new leases and from approving any activities on lands governed by the ULP. The Court also ordered that after DOE conducts an environmental analysis that complies with NEPA, the Endangered Species Act (ESA), all other governing statutes and regulations, and the Court's Order, DOE could then request a dissolution of the injunction.

The Court later amended its injunction to allow DOE, other Federal, state, or local governmental agencies, and/or the ULP lessees to conduct only those activities on ULP lands that are absolutely necessary. DOE will implement this ROD only after the U.S. District Court for the District of Colorado has dissolved the injunction that it issued on October 18, 2011.

DOE has complied with Executive Order (E.O.) 13175, Section 7 of the ESA, and Section 106 of the National Historic Preservation Act (NHPA) by completing its consultations with tribal governments, with the U.S. Fish and Wildlife Service (USFWS), and with tribes, government agencies, and local historical groups.

ADDRESSES: The Final ULP PEIS and this ROD are available on DOE's NEPA Web site at *http://energy.gov/nepa/nepa-documents;* on the DOE Legacy Management (LM) Web site at *http://energy.gov/lm/office-legacy-management;* and on the ULP PEIS Web site at *http://ulpeis.anl.gov.* Requests for copies of these documents may be submitted through the ULP PEIS Web site at *http://ulpeis.anl.gov;* or by contacting Dr. David Shafer by electronic mail: *David.Shafer@lm.doe.gov.*

FOR FURTHER INFORMATION CONTACT: To obtain additional information about the ULP, the PEIS, or the ROD, contact Dr. David Shafer, LM Asset Management Team Lead, as indicated under **ADDRESSES** above. For general information about the DOE NEPA process, contact Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; telephone: 202–586–4600; email: *askNEPA@hq.doe.gov;* fax: 202–586–7031; or leave a toll-free message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: DOE prepared the ULP PEIS and this ROD pursuant to the National Environmental Policy Act of 1969 (42 United States Code [U.S.C.] §§ 4321, *et seq.*), and in compliance with the Council on Environmental Quality (CEQ) implementing regulations for NEPA (40 Code of Federal Regulations [CFR] Parts 1500 through 1508), and DOE's implementing procedures for NEPA (10 C.F.R. Part 1021). This ROD is based on DOE's Final ULP PEIS.

Background

Congress authorized DOE's predecessor agency, the U.S. Atomic Energy Commission (AEC), to develop a supply of domestic uranium. The aggregated acreage managed by AEC totaled approximately 25,000 acres (10,000 ha) in Mesa, Montrose, and San Miguel Counties in western Colorado. Beginning in 1949, the AEC and its successor agencies, the U.S. Energy Research and Development Administration and DOE, administered three separate and distinct leasing programs during the ensuing 60 years. In July 2007, DOE issued a programmatic environmental assessment (PEA) for the ULP, in which it examined three alternatives for the management of the ULP for the next 10 years. In that same month, DOE issued a Finding of No Significant Impact (FONSI), in which DOE announced its decision to proceed with the Expanded Program Alternative, and also determined that preparation of an environmental impact statement (EIS) was not required. Under the Expanded Program Alternative, DOE would extend the 13 existing leases for a 10-year period and would also expand the ULP to include the competitive offering of up to 25 additional lease tracts to the domestic uranium industry. In 2008, DOE implemented the Expanded Program Alternative and executed new lease agreements with the existing

lessees for their 13 respective lease tracts, effective April 30, 2008. In addition, DOE offered the remaining, inactive lease tracts to industry for lease through a competitive solicitation process for 19 leases (some leases combined a number of the lease tracts). That process culminated in the execution of 18 new lease agreements for the inactive lease tracts, effective June 27, 2008. Since that time, two lease tracts were combined into one and another lease was relinquished back to DOE. Accordingly, there are 29 lease tracts that are actively held under lease, and 2 lease tracts that are currently inactive.

On June 21, 2011, DOE published the Notice of Intent (NOI) to prepare the ULP PEIS (see Volume 76, page 36097 of the **Federal Register** [76 FR 36097]). In the NOI, DOE stated that it had determined, in light of the site-specific information that DOE had gathered as a result of the site-specific agency actions proposed and approved pursuant to the July 2007 PEA, that it was appropriate for DOE to prepare a PEIS in order to analyze the reasonably foreseeable environmental impacts, including potential site-specific impacts, of the range of reasonable alternatives for the management of the ULP for the remainder of the 10-year period that was covered by the July 2007 PEA. After DOE published the NOI, it notified the ULP lessees that until the PEIS process was completed, DOE would not approve any new exploration and mining plans and would not require any lessees to pay royalties.

Colorado Environmental Coalition and three other plaintiffs filed a complaint against DOE in the U.S. District Court for the District of Colorado on July 31, 2008, alleging, among other things, that DOE's July 2007 PEA and FONSI violated NEPA by failing to consider adequately the environmental impacts of expansion of the ULP, and violated the ESA by jeopardizing endangered species. On October 18, 2011, the Court issued an Order in which it held, among other things, that DOE had violated NEPA by issuing its July 2007 PEA and FONSI instead of preparing an EIS, and that DOE had failed to consult with the USFWS as required by the ESA. *Colorado Environmental Coalition* v. *DOE*, 819 F. Supp. 2d 1193, 1208–14, 1220–23 (D. Colo. 2011). In that Order, the Court invalidated the July 2007 PEA and FONSI; stayed "the 31 leases currently in existence" under the ULP; enjoined DOE from issuing any new leases on lands governed by the ULP; enjoined DOE from approving any activities on lands governed by the ULP; and ordered that after DOE conducts an environmental analysis that complies with NEPA, the ESA, all other governing statutes and regulations, and the Court's Order, DOE could then move the Court to dissolve its injunction. *Id.* at 1224–25.

The Court later granted in part DOE's motion for reconsideration of that Order and amended its injunction to allow DOE, other Federal, state, or local governmental agencies, and/or the ULP lessees to conduct only those activities on ULP lands that are absolutely necessary: (1) To conduct DOE's environmental analysis regarding the ULP; (2) to comply with orders from Federal, state, or local government regulatory agencies; (3) to remediate certain dangers to public health, safety, and the environment on ULP lands; or (4) to conduct certain activities to maintain the ULP lease tracts and their existing facilities. *Colorado Environmental Coalition v. DOE*, No. 08–cv–1624, 2012 U.S. Dist. LEXIS 24126, at ** 10–15 (D. Colo. Feb. 27, 2012).

Purpose and Need for Agency Action

The underlying purpose and need for agency action is to support the implementation of the Atomic Energy Act of 1954, as amended (AEA), which authorized and directed DOE to develop a supply of domestic uranium (42 U.S.C. 2096), and "to issue leases or permits for prospecting for, exploration for, mining of, or removal of deposits of source material in lands belonging to the United States" to the extent that DOE deems it necessary to effectuate the provisions of the AEA (42 U.S.C. 2097). Congress further recognized the importance of developing a supply of domestic uranium and other source material when it stated in the AEA, in its Congressional findings, that the processing of source material must be regulated "in order to provide for the common defense and security" (42 U.S.C. 2012(d)). In addition, the Energy Policy Act of 2005 (Public Law 109–58) (EPAct) expressed a continued commitment to "decreasing the dependence of the United States on foreign energy supplies" (42 U.S.C. 16181(a) (3)); and to "[e]nhancing nuclear power's viability as part of the United States energy portfolio" (42 U.S.C. 16271(a)(1)). The ULP contributes to the development of a supply of domestic uranium consistent with the provisions of the AEA and EPAct. In support of these statutes, DOE needs to determine the future course of the ULP, including whether to continue leasing some or all of the withdrawn lands and other claims for the exploration and production of uranium and vanadium ores.

Proposed Action

DOE's proposed action in the ULP PEIS was to decide whether to continue the ULP and, if it decided to continue the ULP, to determine which alternative to adopt in order to manage the ULP.

Alternatives

DOE evaluated five alternatives that represent the range of reasonable alternatives for the future course of the ULP. DOE developed these alternatives by carefully considering the need to develop a supply of domestic uranium (consistent with the AEA and the EPAct), and comments received during the public scoping and public comment periods. The five alternatives are:

1. *Alternative 1:* DOE would terminate all leases, and all operations would be reclaimed by lessees. DOE would continue to manage the withdrawn lands, without uranium leasing, in accordance with applicable requirements.
2. *Alternative 2:* Same as Alternative 1, except once reclamation was completed by lessees, DOE would relinquish the lands in accordance with 43 CFR Part 2370. If the Department of the Interior/Bureau of Land Management (DOI/BLM) determines, in accordance with that same Part of the CFR, the lands were suitable to be managed as public domain lands, they would be managed by BLM under its multiple use policies. DOE's uranium leasing program would end.
3. *Alternative 3:* DOE would continue the ULP as it existed before July 2007, with the 13 active leases, for the next 10-year period or for another reasonable period, and DOE would terminate the remaining leases.
4. *Alternative 4 (DOE's preferred alternative identified in the Final ULP PEIS):* DOE would continue the ULP with the 31 lease tracts for the next 10-year period or for another reasonable period.
5. *Alternative 5:* This is the No Action Alternative, under which DOE would continue the ULP with the 31 lease tracts for the remainder of the 10-year period, and the leases would continue exactly as they were issued in 2008.

Environmentally Preferred Alternative

The analyses in the Final ULP PEIS show that potential environmental impacts on the resource areas analyzed for the five alternatives range from "negligible to moderate." Further, the potential environmental impacts would be mitigated as discussed in this ROD. However, there are some differences

among the alternatives. For example, Alternative 5 would result in the greatest potential for impacts of all the alternatives because the assumptions used as the basis for analysis would potentially result in the most activities, the largest area of disturbance, the most ore tonnage excavated and transported, and the most water used. DOE considered two alternatives, Alternatives 1 and 2, which would require immediate reclamation of areas where it is needed and subsequent termination of the leasing. Alternative 1 would result in the least potential environmental impacts of the five alternatives analyzed in detail in the PEIS, and DOE therefore regards it as the environmentally preferred alternative. The potential impacts from Alternative 2 would be identical to Alternative 1 in the short term; however, there could be additional potential impacts under Alternative 2 in the future if the lease tracts would ultimately be transferred to BLM depending on future activities that might be conducted.

DOE did not select Alternative 1 because that alternative would not meet DOE's purpose and need. In contrast, the alternative selected in this ROD will meet DOE's purpose and need, while resulting in potential environmental impacts that were determined to be "negligible to moderate." Additionally, mitigation measures will reduce the likelihood of these potential environmental impacts occurring.

EIS Process

The NOI published on June 21, 2011, began a 78-day public scoping period that ended on September 9, 2011. All scoping comments received were considered in the preparation of the Draft PEIS. A Notice of Availability (NOA) for the Draft ULP PEIS was published in the **Federal Register** on March 15, 2013 (78 FR 16483), and this began a 109-day public comment period that ended July 1, 2013. All comments received on the Draft ULP PEIS were considered in the preparation of the Final ULP PEIS.

DOE distributed copies of the Draft ULP PEIS to those organizations and government officials known to have an interest in the PEIS and to those organizations and individuals who requested a copy. The Draft ULP PEIS was reviewed by other Federal agencies, states, American Indian tribal governments, local governments, and the public. Copies were also made available on the ULP Web site (*http://www.ulpeis.anl.gov/*), the DOE NEPA Web site (*http://energy.gov/nepa/*), and in regional DOE public document reading rooms and public libraries. Announcements indicating the availability of the Draft ULP PEIS and the dates and times of the public hearings were published in local newspapers. Four public hearings were held in four locations in Colorado. The transcripts for the four hearings are posted on the project Web site.

Federal, state, and county agencies and tribal nations participated either as a cooperating agency or commenting agency in the development and preparation of the ULP PEIS. Since January 2012, monthly, as appropriate, telephone conferences have been held among DOE and the cooperating agencies to develop the ULP PEIS. These cooperating agencies participated by reviewing and commenting on ULP PEIS analyses and documentation, as well as providing supporting information. The following government agencies and tribal groups have participated as cooperating agencies by providing their expertise and knowledge about various areas required during the preparation of the ULP PEIS: (1) BLM, (2) U.S. Environmental Protection Agency (EPA), (3) Colorado Department of Transportation, (4) Colorado Division of Reclamation, Mining, and Safety (CDRMS), (5) Colorado Parks and Wildlife, (6) Mesa County Commission, (7) Montrose County Commissioners, (8) San Juan County Commission, (9) San Miguel County Board of Commissioners, (10) Navajo Nation, (11) Pueblo of Acoma, (12) Pueblo de Cochiti, (13) Pueblo de Isleta, and (14) Southern Ute Indian Tribe. The following agencies and tribal groups chose to participate as commenting agencies, and they were included in the project distribution list and received the Draft ULP PEIS for review and comment: (1) USFWS, (2) U.S. Nuclear Regulatory Commission, (3) Colorado Department of Public Health and Environment, (4) Utah Department of Transportation, (5) Hopi Nation, (6) Ute Indian Tribe, (7) Ute Mountain Ute Tribe, and (8) White Mesa Ute Community.

DOE has complied with E.O. 13175, Consultation and Coordination with Indian Tribal Governments, by conducting government-to-government consultations with tribal governments. The government-to-government relationship with Indian tribes was formally recognized by the Federal Government with E.O. 13175 on November 6, 2000, and DOE is coordinating and consulting with Indian tribal governments, Indian tribal communities, and tribal individuals whose interests might be directly and substantially affected by activities on the ULP lands. As part of this consultation, DOE has contacted 25 Indian tribal governments to communicate the opportunities for government-to-government consultations by participating in the planning and resource management decision-making throughout the ULP PEIS process. Five are participating as cooperating agencies, and four are participating as commenting agencies.

In compliance with Section 7 of the ESA, DOE considered the effect of its management of the ULP on species listed under the ESA, and consulted with the USFWS to ensure that the actions that DOE funds, authorizes, or permits are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of the critical habitat of such species. DOE and the USFWS completed their consultation, which included DOE submitting its final biological assessment to the USFWS on May 14, 2013. The USFWS issued its biological opinion on August 19, 2013.

DOE has completed programmatic consultation, in compliance with Section 106 of the NHPA, concerning DOE's management of the ULP, and has signed a Programmatic Agreement (PA) to govern the ULP activities. A PA was deemed appropriate as DOE expects the historic properties to be similar and repetitive or regional in scope, and the effects cannot be fully determined at this time prior to submittal of site-specific plans.

The NOA for the Final ULP PEIS was published in the **Federal Register** on March 21, 2014 (79 FR 15741).

Comments Received on the Final PEIS

DOE received three letters regarding the Final ULP PEIS, which were considered in developing this ROD. The letters were from the Hopi Tribe, the Western Colorado Congress (WCC), and the EPA. These letters did not present significant new circumstances or information that would warrant a supplemental EIS pursuant to CEQ and DOE NEPA implementing regulations [40 CFR 1502.9(c) and 10 CFR 1021.314(a)].

The Hopi Tribe stated its longstanding concerns about adverse impacts of past uranium mining on the land, water, and people, and that past contamination from uranium mining should be cleaned up before any additional mining is approved. The Hopi Tribe also expressed strong opposition to Alternatives 3, 4, and 5, and stated that, if DOE selects Alternative 4, the Tribe expects continuing consultation regarding cultural resource survey reports and treatment plans for the mitigation of adverse effects to National

Register eligible prehistoric areas and Hopi Traditional Cultural Properties that may exist in areas that cannot be avoided by ground disturbing activities.

Consistent with the PA, DOE will consult with the Hopi Tribe in identifying properties of traditional religious and cultural importance listed in or eligible for listing in areas of potential effects, assessing the effects on those properties, and developing appropriate mitigation strategies for individual undertakings.

WCC indicated in their letter that they continued to have concerns related to the prospect of increased uranium mining in western Colorado, expressed their disappointment that DOE continued to support Alternative 4, and stated that WCC could not support any new mining endeavors until all abandoned uranium mines are cleaned up. WCC also expressed concerns with "booms and busts" in the uranium industry and indicated that Alternative 4 would continue to tie up the lands in the area to an unstable uranium market and impact other forms of development. Further, WCC indicated they understood the rationale that the analysis of uranium markets, long-term economics, transportation corridors, and public health did not fit within DOE's "Purpose and Need," but they disagreed with this approach. WCC expressed their appreciation that DOE included more site specific data in the Final PEIS but stated that the changes did not address the full breadth of their comments and concerns with Alternative 4. In addition, WCC noted that DOE did not preclude development of alternative energy projects on ULP lands and expressed hope that the ULP PEIS can be a step forward to creating a transparent process that leads to a uniform and modern standard for all abandoned uranium mines in Colorado.

DOE understands and agrees with WCC's concern with the need to reclaim all the abandoned uranium mines in the Colorado Plateau and appreciates WCC recognition that DOE has reclaimed all legacy mines within the ULP program areas. While DOE did not evaluate the economics of the uranium market, DOE did evaluate the potential impacts of the alternatives on transportation, socioeconomics, and human health, and the potential cumulative impacts of the ULP. These impacts were determined to be "negligible to moderate," and DOE will require mitigation measures to avoid or minimize the environmental impacts from specific future ULP activities. DOE appreciates WCC's vision that the ULP PEIS can be a step forward to a transparent process for a uniform and modern standard of reclamation for abandoned mines. DOE believes the ULP program can also be a step forward for modern and environmentally sensitive uranium mine exploration and development in addition to reclamation.

The EPA Region 8, in its letter, indicated that DOE worked diligently to address EPA concerns on the Draft PEIS by providing additional information in the Final PEIS. EPA expressed their appreciation for the revisions made in the Final PEIS and as a result had no comments on the Final PEIS.

DOE appreciates EPA's diligence in working with DOE to assure that the PEIS provided a thorough analysis of potential impacts and clearly communicated the results. EPA also helped DOE to clarify and identify mitigation measures to reduce the potential impacts.

Decision

DOE has decided to continue the ULP with the 31 lease tracts for the next 10-year period beginning with the publication of this ROD in the **Federal Register**. Alternative 4, the alternative selected in this ROD, will result in "negligible to moderate" potential environmental impacts and will provide access to a domestic source of uranium consistent with the purpose and need stated in the Final PEIS. To be more transparent, DOE decided to set a specific timeframe of 10 years in this decision, even though Alternative 4 in the PEIS allowed the program to continue "for the next 10-year period or for another reasonable period."

DOE will implement this ROD only after the U.S. District Court for the District of Colorado has dissolved the injunction that it issued on October 18, 2011. In the continuation of the ULP, DOE will evaluate the 31 lease tracts by considering individual tract management issues, such as whether to lease the tracts that are presently not leased, and whether potential future requests for lease transfers will be approved. In implementing this decision, leases will be modified, as needed, to include mitigation measures described in the ULP PEIS. DOE will prepare a Mitigation Action Plan (MAP) as described below under Mitigation. As plans for exploration, mine development and operation, or reclamation are submitted by the lessees to DOE for approval, further NEPA analyses for these actions will be prepared and tiered from the Final ULP PEIS. The level of follow-on NEPA analyses will depend on the action being proposed by the lessees. For mining plans to be submitted for approval, DOE will prepare, at a minimum, an environmental assessment with appropriate public involvement to further evaluate potential site impacts. These NEPA analyses will be prepared to inform DOE's decisions on approval of the plans, including the conditions DOE will require to mitigate potential environmental impacts. DOE will conduct further consultations regarding cultural and endangered species, as appropriate, depending on the specific action.

Program Implementation

As described in Alternative 4 in the Final PEIS, all 31 lease tracts will be available for potential exploration and mining of uranium ores. Leases on the ULP lease tracts will be continued for the next 10 years. Two of the 31 lease tracts (Lease Tract 8A and Lease Tract 14) are currently not leased. Lease Tract 8A is a small tract that is isolated and may be located entirely below or outside the uranium-bearing formation, which could indicate a lack of ore. Lease Tract 14 is composed of three parcels (14–1, 14–2, and 14–3). There was some interest in Parcels 14–1 and 14–2 by potential lessees in the past; however, the third parcel (14–3, which lies east of 14–1) is located almost entirely within the Dolores River corridor and has never been leased. The leases stipulate that no new mining activity could be conducted within 0.25 mi (0.4 km) of the Dolores River.

Eight of the lease tracts (5, 6, 7, 8, 9, 11, 13, and 18) contain one or more existing mines that operated in the past under DOE's approval and are currently permitted by CDRMS. Three lease tracts (13A, 21, and 25) have existing mine sites that have been fully reclaimed in accordance with existing environmental requirements and DOE lease stipulations; however, these mine sites currently remain permitted by CDRMS.

The lessees have submitted no new project-specific plans to DOE with regard to where and how many mines might be developed and operated in the near future. For the purposes of analysis in the ULP PEIS, DOE conservatively assumed, based on past practices, that there would be a total of 19 mines operating at various production rates during a peak year of operations. That is, the 19 mines would comprise 6 small, 10 medium, 2 large, and 1 very large (open-pit JD–7 mine). It was further assumed that there would be a smaller number of mines in operation in years other than the peak year, and that the peak year could occur more than once (i.e., there could be multiple years with the same number of mines operating at similar ore production rates). It was expected that the potential

environmental impacts for years other than the peak year(s) would fall within the range of impacts discussed for a peak year in the ULP PEIS. Therefore, the potential environmental impacts for the entire 10-year lease period would be expected to be no more than 10 times those for the peak year.

For the exploration phase of a mine, it is assumed that a total of 0.33 acre (0.13 ha), 1.1 acre (0.44 ha), and 0.33 acre (0.13 ha) of surface would be disturbed for the new 6 small, 10 medium, and 2 large mines respectively. For the very large mine, 210 acres (92 ha) have already been disturbed at the JD–7 surface open-pit mine. A total of 20 workers would be required to conduct the exploration phase for the mines assumed for the peak year (not including the very large open-pit mine at JD–7, for which exploration was assumed to have been completed).

The total area disturbed for Alternative 4 will be approximately 460 acres (190 ha). Total tonnage of ore generated for the peak year of operation will be about 480,000 tons. The number of workers needed for mine development and operations will depend on the size of the mine and could vary from 7 to 51 workers. It is assumed that 7, 11, 17, and 51 workers will be needed for each small, medium, large, and very large mine, respectively. These workers will consist mostly of mine workers. A peak year of operation for 19 mines will involve about 237 workers.

Equipment needed for mine development and operations will include both underground and surface equipment. Water will also be needed and will be trucked to the location of the activities. The annual amount of water needed for the 19 mines during the peak year assumed for this action is estimated to be about 6,300,000 gal (19 ac-ft.). Retention ponds will be required to capture surface water and prevent sediment from entering nearby streams and drainages. Reclamation of the mine operations will involve about 39 workers over the course of a peak year. It is assumed that there will be a waiting period of up to 2 years to account for verification of adequate revegetation and obtaining the necessary release and approval.

Based on historical and existing mine development, it is expected, and the analysis assumes, that the mines will be underground, with the exception of the JD–7 mine on Lease Tract 7, which is a surface open-pit mine.

Mitigation

During lease implementation, DOE will require specific measures to be identified to ensure that potential environmental impacts from specific future ULP activities are avoided or minimized consistent with the mitigation measures in the Final ULP PEIS. DOE's decision incorporates all practicable means to avoid or minimize adverse environmental impacts during exploration, mining operations, and reclamation associated with the ULP. All activities associated with the ULP will be conducted to ensure that conditions are protective of the environment and human health. DOE will ensure implementation of the mitigation measures identified in the Final ULP PEIS (section 4.6), as appropriate. Mitigation measures will ensure that risks from potential exposures under foreseeable end-state scenarios analyzed in the ULP PEIS (i.e., a recreational visitor scenario at the mine site footprint and within the lease tracts, and a resident scenario for outside the lease tracts) will be very small. These measures are identified in current leases or will be added to the leases.

These and other mitigation measures address potential impacts to human health, transportation, and the various environmental resources as follows: (1) Reduce dust emissions, (2) identify and protect paleontological resources, (3) protect soil from erosion, (4) minimize the extent and amount of ground disturbance, (5) restore original grade and reclaim soil and vegetation, (6) protect wildlife and wildlife habitats, (7) minimize lighting to off-site areas, (8) protect human health by minimizing radiological exposure, and (9) assure safe and proper transport of generated ore.

Mitigation measures identified in the Final ULP PEIS and in the leases will be addressed in a MAP. DOE will prepare the MAP, consistent with 10 CFR 1021.331, to establish how the mitigation measures will be planned, implemented, and monitored. Compliance measures identified in the Final ULP PEIS will not be included in the MAP because they are legal requirements irrespective of the MAP. Lease stipulations will be in place to reinforce these legal requirements. DOE will ensure that the lessees fulfill the mitigation measures specified in this ROD and in the MAP, which is under development. DOE will make the MAP available to the public via the Web sites listed under **ADDRESSES** above.

Basis for Decision

In making this decision, DOE has carefully considered all public comments, the results of the Final ULP PEIS evaluation, the biological opinion issued by the USFWS based on the ESA consultation, and the establishment of the PA consistent with Section 106 of the NHPA. DOE believes that uranium mining activities at the ULP lease tracts can continue to be conducted in a manner that is protective of the environment and public health. This decision supports the AEA provisions that authorize and direct DOE to develop a supply of domestic uranium, and to issue leases or permits for prospecting, exploration, mining, or removal of deposits of uranium ore in lands belonging to the United States. An active ULP program will be more successful in meeting these needs than would an inactive program. Although Alternatives 3 and 5 considered in the PEIS also provided an active ULP program, this decision provides access to a greater supply of domestic uranium from the lease tracts compared to Alternative 3, could create about 229 direct jobs and 152 indirect jobs, generates about $14.8 million in income, provides royalties from the leases to the Federal Government, and results in negligible to moderate potential environmental impacts that would be less than those under Alternative 5.

Issued in Washington, DC, on this 6th of May 2014.

David W. Geiser,

Director, DOE Office of Legacy Management.

[FR Doc. 2014–10847 Filed 5–9–14; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9910–76–OA]

National Environmental Education Advisory Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, EPA gives notice of a meeting of the National Environmental Education Advisory Council (NEEAC). The NEEAC was created by Congress to advise, consult with, and make recommendations to the Administrator of the Environmental Protection Agency (EPA) on matters related to activities, functions and policies of EPA under the National Environmental Education Act (Act). 20 U.S.C. § 5508(b).

The purpose of these meeting(s) is to discuss specific topics of relevance for consideration by the council in order to provide advice and insights to the Agency on environmental education.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez

Civil Action No. 08-cv-01624-WJM-MJW

COLORADO ENVIRONMENTAL COALITION,
INFORMATION NETWORK FOR RESPONSIBLE MINING,
CENTER FOR NATIVE ECOSYSTEMS,
CENTER FOR BIOLOGICAL DIVERSITY, and
SHEEP MOUNTAIN ALLIANCE,

Plaintiffs,

v.

OFFICE OF LEGACY MANAGEMENT, and
UNITED STATES DEPARTMENT OF ENERGY,

Defendants.

ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANTS' MOTION FOR RECONSIDERATION

This matter is before the Court on Defendants' Motion to Reopen and for Reconsideration of October 18, 2011 Order. (ECF No. 95.) Plaintiffs have filed a Response to the Motion (ECF No. 100), and Defendants have filed a Reply (ECF No. 101). The Court hereby REOPENS this action for the limited purpose of ruling on Defendants' Motion for Reconsideration. *See* D.C.COLO.LCivR 41.2. Having carefully considered the arguments presented, Defendants' Motion for Reconsideration is GRANTED IN PART and DENIED IN PART.

I. BACKGROUND

The Uranium Lease Management Program ("ULMP") is a uranium mining program administered by Defendants in the Uravan Mineral Belt in Mesa, Montrose, and

San Miguel Counties in southwestern Colorado. Plaintiffs brought this action to challenge (1) Defendants' 2007 decision to expand the ULMP, (2) Defendants' issuance of leases to uranium mining companies under the expanded ULMP, and (3) Defendants' approvals of exploration or reclamation activities on certain lease tracts.

The Court, in its October 18, 2011 Opinion and Order, held that Defendants' 2007 Environmental Assessment ("EA") and Finding of No Significant Impact ("FONSI") approving the expansion of the ULMP violated the National Environmental Policy Act ("NEPA") and Endangered Species Act ("ESA"). (ECF No. 94.) As a result, the Court invalidated the EA and FONSI, ordered Defendants to conduct a NEPA- and ESA-compliant environmental analysis on remand, stayed the leases already issued by Defendants, enjoined Defendants from issuing any new leases on ULMP lands, and enjoined Defendants "from approving any activities on lands governed by the ULMP, including exploration, drilling, mining, and reclamation activities" (collectively, the "Injunction"). (*Id.* at 52.)

II. ANALYSIS

A. Parties' Arguments

In their Motion for Reconsideration (the "Motion"), brought under Federal Rule of Civil Procedure 59(e), Defendants argue that:

(1) the Injunction is not warranted and constitutes manifest legal error;

(2) the Court should reconsider the Injunction given that Defendants have conducted further steps in completing an Environmental Impact Statement ("EIS"); and

(3) the Court should at least modify the Injunction to allow:

(a) activities on ULMP lands that are necessary to complete the EIS;

(b) activities on ULMP lands that are required to comply with orders from government regulatory agencies; and

(c) certain reclamation activities on ULMP lands.

In response, Plaintiffs argue that the Motion should be denied because Defendants failed to meaningfully confer with Plaintiffs prior to filing the Motion, and because none of the relief sought is warranted.

B. Legal Standard

"A Rule 59(e) motion to alter or amend the judgment should be granted only to correct manifest errors of law or to present newly discovered evidence." *Phelps v. Hamilton*, 122 F.3d 1309, 1324 (10th Cir. 1997) (quotation marks omitted); *see also Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000) ("Grounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice.").

C. Discussion

1. Meet-and-confer requirement

Plaintiffs argue that the Motion should be denied because Defendants failed to meaningfully meet and confer prior to filing the Motion. The Court agrees that Defendants' counsel's last minute efforts to meet and confer on the day of the deadline to file a timely Rule 59(e) motion were inadequate. However, under the unique circumstances present here, in combination – namely, (1) counsel for Defendants did

make three attempts to contact counsel for Plaintiffs on the day of the deadline, but counsel for Plaintiffs did not respond until very late in the afternoon and then proposed meeting and conferring the next day, (2) the 28-day deadline to file a motion under Rule 59(e) is jurisdictional, and (3) the primary relief sought by Defendants is complete dissolution of the injunction, which makes the Motion comparable to a potentially dispositive motion, which is not subject to the meet and confer requirement under D.C.COLO.LCivR 7.1A. The Court accordingly declines to deny the Motion on this ground.

2. Whether the Court Committed Legal Error by Issuing the Injunction

Defendants first argue that the Injunction was not warranted because the Court failed to adequately evaluate the governing factors from *Monsanto Co. v. Geertson Seed Farms*, 130 S. Ct. 2743, 2756 (2010), and in particular the requirement of irreparable harm. (ECF No. 95, at 5-7.) The Court disagrees. The Court carefully considered the *Monsanto* factors, applied them to the facts, and found the requisite irreparable harm. (ECF No. 94, at 49-50.) The Court did not clearly err in reaching this conclusion. Therefore, the Court denies the Motion as to this argument.

3. Further Steps in Completing EIS

Defendants also emphasize that they have completed significant new steps in working on an EIS, including creating a draft schedule for the EIS's completion. (ECF No. 95, at 7-10.) Defendants made similar arguments to the Court in their original Response brief, in which they argued that this action was prudentially moot because of Defendants' plan to create an EIS. The Court rejected those arguments, finding

numerous reasons why the action was not prudentially moot. (ECF No. 94, at 11-15.) Although the Court emphasized in its Order that Defendants had not even yet created a timetable for the completion of the EIS, the fact that a draft schedule has now been created does not change the Court's conclusion, given all the other reasons expressed by the Court for why the action was not prudentially moot.

4. Activities Necessary to Complete EIS

Defendants also seek clarification of the Court's Order regarding activities on ULMP lands that are necessary to complete the EIS. (ECF No. 95, at 10-12.) The Court recognizes that its injunction prohibiting "any activities on lands governed by the ULMP" is broad, and there is good cause to amend that portion of the Injunction. (ECF No. 94, at 52.) Therefore, as ordered below, the Injunction will be amended to allow those activities on ULMP lands that are absolutely necessary to conduct an environmental analysis on remand regarding the ULMP that fully complies with NEPA, ESA, all other governing statutes and regulations, and this Court's October 18, 2011 Opinion and Order. As proposed by Defendants, the Court will require Defendants "to provide notice to the Court and Plaintiffs . . . before any such activities beg[i]n . . . on the [ULMP] lands." (ECF No. 101, at 3.)

5. Activities Necessary to Comply With Orders From State Regulatory Agencies

Defendants also seek clarification regarding activities on ULMP lands that are necessary to comply with orders of government regulatory agencies. (ECF No. 95, at 14-15.) They point out that the Colorado Division of Reclamation, Mining and Safety has already ordered two lessees to prepare an Environmental Protection Plan, and that

activities on ULMP lands may be necessary to comply with that Order. Although this issue is to some degree not yet ripe, the Court finds good cause to modify the injunction to allow those activities on ULMP lands that are absolutely necessary to comply with an order from a federal, state, or local government regulatory agency. As to these actions also, the Court will require Defendants to provide notice to the Court and Plaintiffs before any such activities begin on ULMP lands.

6. Reclamation Activities

Defendants also contend that they should be allowed to conduct certain reclamation activities on the ULMP lands. While Defendants' Motion and supporting documents did not provide enough detail to the Court to adequately analyze this request, Defendants' Reply brief and the accompanying Declaration of Steven R. Schiesswohl does.

The Court finds good cause to amend the Injunction to allow certain reclamation activities on ULMP lands. Specifically, the Court will amend the injunction to allow those activities on ULMP lands that are absolutely necessary to remediate dangers to the public health, safety, and environment on ULMP lands caused by major storm events, acts of vandalism, or land subsistence. (*See* ECF No. 101-1, ¶ 6.) As to these actions, the Court will require Defendants to provide notice to the Court and Plaintiffs before any such activities begin, if possible. However, if an emergency situation prevents Defendants from providing such notice before such activities begin, Defendants shall provide notice to the Court and Plaintiffs of such response activities no later than seven days after the activities began.

The Court will also amend the injunction to allow those activities on ULMP lands

that are absolutely necessary to maintain access roads; maintain safety berms and stormwater run-off control berms associated with existing mine dumps and mine yard facilities; maintain security fences and gates to limit public access to potentially hazardous areas; conduct inspections of existing mines to maintain safe access to mine workings; conduct environmental sampling of existing monitoring wells, and air sampling of exhaust air from existing mines; perform weed control of non-native noxious weeds; perform vegetation control around existing mine portal and vent hole openings to minimize fire potential; or maintain and repair mine equipment at existing mine yard facilities. As to these actions, the Court will not require Defendants to provide notice before conducting such activities, but will require Defendants to provide Plaintiffs (but not the Court) with bi-monthly (every 60 days) summaries of such activities that have been conducted.

Defendants will not be allowed to close or gate open mine portals, close mine shafts, or close mine vents, unless ordered to do so by a federal, state, or local government regulatory agency.

III. CONCLUSION

In accordance with the foregoing, the Court ORDERS as follows:

(1) This action is REOPENED for the limited purpose of ruling on Defendants' Motion for Reconsideration;

(2) Defendants' Motion for Reconsideration (ECF No. 95) is GRANTED IN PART and DENIED IN PART;

(3) Defendants' Motion for Reconsideration is GRANTED in so far as the Court's injunction will be amended to allow Defendants; other federal,

state, or local governmental agencies; and/or the lessees to conduct only those activities on ULMP lands that are absolutely necessary:

(a) to conduct an environmental analysis regarding the ULMP that fully complies with NEPA, ESA, all other governing statutes and regulations, and this Court's October 18, 2011 Opinion and Order;

(b) to comply with orders from federal, state, or local government regulatory agencies;

(c) to remediate dangers to the public health, safety, and environment on ULMP lands caused by major storm events, acts of vandalism, or land subsistence; and

(d) to maintain access roads; maintain safety berms and stormwater run-off control berms associated with existing mine dumps and mine yard facilities; maintain security fences and gates to limit public access to potentially hazardous areas; conduct inspections of existing mines to maintain safe access to mine workings; conduct environmental sampling of existing monitoring wells, and air sampling of exhaust air from existing mines; perform weed control of non-native noxious weeds; perform vegetation control around existing mine portal and vent hole openings to minimize fire potential; or maintain and repair mine equipment at existing mine yard facilities.

(4) In all other respects, Defendants' Motion for Reconsideration is DENIED;

(5) As amended by this Order, this Court's ongoing injunction consists of the

following provisions:

(a) Defendants' 2007 EA and FONSI are invalidated and have no further legal or practical effect;

(b) The 31 leases currently in existence under the ULMP are stayed;

(c) Defendants are enjoined from issuing any new leases on lands governed by the ULMP;

(d) Defendants are enjoined from approving any activities on lands governed by the ULMP, including exploration, drilling, mining, and reclamation activities, except that Defendants; other federal, state, or local governmental agencies; and/or the lessees are allowed to conduct only those activities on ULMP lands that are absolutely necessary:

(i) to conduct an environmental analysis on remand regarding the ULMP that fully complies with NEPA, ESA, all other governing statutes and regulations, and this Court's October 18, 2011 Opinion and Order;

(ii) to comply with orders from federal, state, or local government regulatory agencies;

(iii) to remediate dangers to the public health, safety, and environment on ULMP lands caused by major storm events, acts of vandalism, or land subsistence; and

(iv) to maintain access roads; maintain safety berms and stormwater run-off control berms associated with existing

mine dumps and mine yard facilities; maintain security fences and gates to limit public access to potentially hazardous areas; conduct inspections of existing mines to maintain safe access to mine workings; conduct environmental sampling of existing monitoring wells, and air sampling of exhaust air from existing mines; perform weed control of non-native noxious weeds; perform vegetation control around existing mine portal and vent hole openings to minimize fire potential; or maintain and repair mine equipment at existing mine yard facilities.

(e) If Defendants plan to conduct activities that are absolutely necessary to complete the EIS or to comply with orders from federal, state, or local government regulatory agencies, the Court orders Defendants to provide notice to the Court and Plaintiffs before any such activities begin;

(f) If Defendants plan to conduct activities that are absolutely necessary to remediate dangers to the public health, safety, and environment on ULMP lands caused by major storm events, acts of vandalism, or land subsistence, the Court orders Defendants to provide notice to the Court and Plaintiffs before any such activities begin, if possible, but in any event shall be provided to the Court and Plaintiffs no later than seven days after such activities began;

(g) If Defendants plan to conduct activities that are absolutely

necessary to maintain access roads; maintain safety berms and stormwater run-off control berms associated with existing mine dumps and mine yard facilities; maintain security fences and gates to limit public access to potentially hazardous areas; conduct inspections of existing mines to maintain safe access to mine workings; conduct environmental sampling of existing monitoring wells, and air sampling of exhaust air from existing mines; perform weed control of non-native noxious weeds; perform vegetation control around existing mine portal and vent hole openings to minimize fire potential; or maintain and repair mine equipment at existing mine yard facilities, the Court orders Defendants to provide Plaintiffs (but not the Court) with bi-monthly summaries of such activities that have been conducted;

(h) After Defendants conduct an environmental analysis on remand that fully complies with NEPA, ESA, all other governing statutes and regulations, and this Court's October 18, 2011 Opinion and Order, Defendants may move the Court to dissolve this injunction;

(6) If, at any point in the future, Plaintiffs or Defendants contemplate filing a motion for reconsideration under Federal Rule of Civil Procedure 60(b) (which the Court discourages), or Defendants contemplate filing a motion to dissolve the injunction following completion of their new environmental analysis, they shall first fully and meaningfully meet and confer with opposing counsel pursuant to D.C.COLO.LCivR 7.1A.

(7) After entry of this Order, the Clerk of Court shall again administratively CLOSE this action, subject to the Court's continuing jurisdiction to enforce full compliance with this Order.

Dated this 27th day of February, 2012.

BY THE COURT:

William J. Martínez
United States District Judge