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MAY 02 2018

**DIVISION OF RECLAMATION  
MINING AND SAFETY**

**INFORM**

INFORMATION NETWORK FOR  
RESPONSIBLE MINING

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May 2, 2018

Michael A. Cunningham  
Colorado Division of Reclamation, Mining & Safety  
1313 Sherman Street, Room 215  
Denver, CO 80203

Re: Robert Michael #1, P-2018-008

Dear Mr. Cunningham,

The Information Network for Responsible Mining objects to the initiation of a review and any approval of the Notice of Intent (P-2018-008) for the Robert Michael #1 site, filed by Robert Berry of Castle Rock. Pursuant to Rule 1.3 of the Board's Mineral Rules and Regulations, INFORM requests a determination from the Colorado Mined Land Reclamation Board regarding the release of confidential information in P-2018-008 according to the Board's Rules and the Colorado Mined Land Reclamation Act prior to the Division's decision.

Rule 1.3(4)(a)(ii)(A) specifies that only "information relating to the mineral deposit location, size or nature, and other information designated by the prospector and determined by the Board as proprietary, trade secret or that would cause substantial harm to the competitive position of the prospector, shall be protected as confidential." In practice, the statutory requirement that, in order to be confidential, information must cause substantial harm to the competitive position, means that very little information in a prospecting notice can be withheld from public scrutiny and must be strictly limited to information that is demonstrably and directly linked to the proprietary and economic nature of the ore deposit. This was the intent of the Colorado Legislature when it passed SB 228 in 2008 restricting the ability of prospectors to shield information about their operations from public view. Site and location maps may not be withheld from the public.

The nonconfidential Notice of Intent filed in this case does not meet the statutory requirement and lacks substantial information, and, as a result, the public cannot adequately review the notice in order to determine whether the proposed operation will harm the environment. The Board and Division have not so far made a determination that any of the information in this Notice of Intent is confidential under the rule but should do so now. INFORM reserves the right to provide substantial comments on any additional information once disclosed

and requests that the public be provided with an opportunity to comment after a complete Notice of Intent is made publicly available.

Rule 1.3(4)(a)(iv)(A) allows a member of the public to request that information be disclosed and the Division must treat that as a deficiency in the application. Therefore, INFORM objects to the approval of the Notice of Intent until the issue of confidentiality is resolved and any subsequent concerns are addressed. Should the prospector refuse to disclose the information as required under Rule 1.3(4)(a)(iv)(A) , then INFORM will request that a hearing be held before the Mined Land Reclamation Board to make a determination.

The proponent of the Robert Michael #1 Notice of Intent is required to provide the following information in the nonconfidential Notice of Intent available for public review:

1. The actual location of the prospecting site where disturbance will occur must be disclosed. GPS coordinates are acceptable.

2. A 7.5 minute USGS location map that shows the location of the prospecting activity, including the location of any pits, trenches, cuts or drill holes, in a manner that allows the public to determine whether the prospecting site will impact surface water supplies, wildlife habitat, protected public lands, source water protection areas, municipal watersheds or any other special issues of concern related to location.

3. The total surface area in acres that will be disturbed and the total permit area must be disclosed.

4. The amount of material that will be extracted, moved or proposed to be moved must be disclosed. The number of pits that are planned for excavation must be disclosed, along with their location, depth and size.

5. The exact nature of the prospecting activity to occur must be disclosed and cannot be withheld as confidential information. This includes a description of any surface disturbances and excavation, the manner in which areas will be excavated, what types of materials will be used, what kinds of tools and machinery will be used, how hazardous materials will be handled, how spills of such materials will be handled, how excavated material will be prevented from coming into contact with surface water, how storm water flows will be managed, how erosion will be prevented, how the site will be accessed, whether roads will be built or upgraded, how wildlife habitat will be protected, how the site will be reclaimed, and all other information relevant to understanding the nature of the proposal and whether the Notice of Intent can meet the requirements of Rule 5 must be disclosed.

6. The nature of the excavated ore and how it will be investigated, including a determination of whether it will produce acidic or toxic releases into the environment, must be disclosed.

7. The equipment that will be used on site during prospecting operations is not confidential and must be disclosed.

8. The hydrological balance of the site must be described and how impacts that disrupt the hydrological balance of the site will be addressed must be disclosed in the Notice of Intent. How surface and ground water will be affected and the proximity of any streams or creeks at the site must be disclosed. How ground and surface water quality will be protected must be disclosed.

9. A description of the native vegetation of the area must be disclosed, including the specific species that are currently present. "Grasses" is not a suitable disclosure, as currently stated in the Notice of Intent, nor is it a suitable reclamation plan. The prospector's plans for how wildlife habitat will be restored following prospecting activities must be disclosed in suitable detail.

10. The depth of topsoil at the site must be disclosed prior to the approval of activities and how it will be managed during the proposed two-year prospecting period must be disclosed.

11. The Notice of Intent should rely on the approved native flora species as recommended by Colorado Parks and Wildlife and disclose the specific mix in the Notice.

12. The Notice of Intent should clarify whether BLM or USFS land is affected, or both, as the Notice indicates that notification has been sent to both agencies. The evidence of notification to these agencies should be posted in the permit file and disclosed. Compliance with all BLM and USFS regulations, including any applicable analysis required by the National Environmental Policy Act, must be demonstrated and should be disclosed publicly with the Notice of Intent.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Thurston", written in a cursive style.

Jennifer Thurston