



Colorado Milling Company, LLC, File No. M-1992-117,

Cynthia Kennedy <ctk@kennedylawyer.com>

Fri, Jun 21, 2019 at 4:50 PM

To: "amy.eschberger@state.co.us" <amy.eschberger@state.co.us>, "micheala.cunningham@state.co.us" <micheala.cunningham@state.co.us>, "scott.schultz@coag.gov" <scott.schultz@coag.gov>, "jeff.fugate@coag.gov" <jeff.fugate@coag.gov>

Cc: Mark Steen <goldtontine@gmail.com>, "Mike Bynum (mike@bzrez.com)" <mike@bzrez.com>, "jrholaw@comcast.net" <jrholaw@comcast.net>

Gentlemen, attached please find Colorado Milling Company, LLC's Motion to Postpone or Stay Enforcement Hearing, for Extension of Review and Decision Date and for Exempt to Cease and Desist

Order to Allow Pump Testing, and a Witness/Exhibit List for the hearing scheduled for June 26-27, 2019.

Sincerely,

Cyndi Kennedy

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a professional corporation

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2 attachments



CMCMotionExtension.pdf
229K



CMCWitnessExhibitList.pdf
66K

BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

Violation No. MV-2017-036

**COLORADO MILLING COMPANY, LLC'S MOTION TO POSTPONE OR
STAY ENFORCEMENT HEARING, FOR EXTENSION OF REVIEW AND
DECISION DATE, AND FOR EXEMPTION TO CEASE AND DESIST ORDER
TO ALLOW PUMP TESTING**

**IN THE MATTER OF A POSSIBLE VIOLATION BY COLORADO MILLING
COMPANY, LLC, CEASE AND DESIST ORDER, CORRECTIVE ACTIONS,
AND CIVIL PENALTIES FOR FAILING TO PROTECT AREAS OUTSIDE OF
THE AFFECTED LAND FROM DAMAGES, File No. M-1994-117**

COMES NOW, Colorado Milling Company, LLC ("CMC" or "Operator"), pursuant to Rule 1.4.1(9) of the Rules and Regulations of the Colorado Mined Land Reclamation Board, and requests the Board: (1) continue the above-referenced hearing currently scheduled for June 26-27, 2019; (2) extend the review time and decision date for approval of the Application for Permit Amendment; and (3) make an exception to the existing Cease and Desist Order allowing CMC to engage in pump testing in order to prepare a mine pool drawdown plan in support of its Application for Amendment. In support of these requests, CMC states as follows:

1. The origination of this matter dates to corrective actions for Violation No. MV-2017-036 wherein the Board ordered Colorado Milling to take corrective actions vis-a vis the initiating incident (subsidence of a roadway) and to file a permit amendment application to formally add the previously permitted Left Hand Creek Pump Station, Gold Hill Mill Pipeline, and the Times Mine adit portal to the affected land boundary of the Gold Hill Mill Permit. These three features will be collectively referred to as the "Gold Hill Mill Waterline."
2. The corrective actions regarding the road subsistence were timely undertaken and are not the subject of this hearing.
3. An Application for an Amendment to the Gold Hill Mill Limited Impact 110(2) Permit No. M-1994-117 was timely filed on January 4, 2018 but has been met by a series of adequacy review letters from the Division. The Adequacy Review Letters, rather than narrowing the issues, have broadened the Division's demands and concerns, and the

enforcement hearing has been rescheduled several times to accommodate the ongoing dialogue regarding the permit amendment application.

4. On January 11, 2019, a Notice of Board Hearing was issued setting the matter for the April 24-25 hearing. On March 29, it was further rescheduled to June 26-27, 2019. The extension was to give CMC time to respond to the Division's Adequacy Review Letter No. 3.

5. Adequacy Review Letter No. 3 required CMC to hire an engineer to provide an evaluation of the Times Mine Bulkhead. CMC hired Christoph Goss, PhD, P.E. of Deere & Ault Consultants, Inc.

6. On May 17, 2019¹, CMC responded to the Division's Adequacy Review No. 3 with 63 pages of information, including pictures and maps and a Technical Memorandum: Times Mine Bulkhead Evaluation by Christoph Goss, PhD, P.E. Mining/Civil Engineer (the "Goss Report") dated May 15, 2019.

7. The Goss Report included recommendations including a recommendation for further investigation and testing.

8. Upon receipt of CMC's Response and the Goss Report, the Division issued a 4th Adequacy Review Letter on May 21, 2019. This Letter specifically incorporated the recommendations from the Goss report and requested CMC submit:

a) A mine pool drawdown plan to rapidly lower water levels in the mine workings in an emergency situation where bulkhead failure is imminent. The plan should include details such as the type and location of equipment to be used, pump/flow rate capacities, estimated water volume, and how the operation will manage water pumped from the workings.

9. CMC contacted Deere & Ault Consultants, Inc. regarding creating such a plan. Mining/Civil Engineer Goss has written a letter to the Board dated June 14, 2019 noting that he agrees with the necessity for a mine pool drawdown plan. Mr. Goss notes that the first step in preparing such a plan is to evaluate the quantity of water in the mine pool at a given elevation above the Wynona Winze collar (8347.7). Once the quantity of water is known, an appropriate control plan can be developed. The letter states that, "To the best of our knowledge, pump testing is the only technique available to develop a reliable

¹ Technically this response was due on the 14th of May, 2019; however, the Division accepted the filing and issued a 4th Adequacy Review Letter. CMC believes any issues regarding the timing of this Response were waived.

estimate of water volume, pumping rates, and drawdown time.” Goss warns that preparing a mine pool drawdown plan prior to performing the pump test would be preliminary and result in an inaccurate document.

10. On June 12, 2019, the same day Goss was meeting with CMC to discuss the detailed logistics of the pumping test including flow meter placement, measurement techniques, potential quantities, and drawdown, CRMS issued a letter denying the permit amendment and stating, “*the Division would consider pumping water into or out of the mine workings (including any pump tests) to be a violation of the Cease and Desist Order at this time...*”.

11. The letter was issued prematurely in that CMC had not yet responded to the 4th Adequacy Review Letter and assumed it had DRMS’s support to ask for this extension to do so.

12. CMC believes it has been diligent in responding to the many new demands made upon it for information, but faced with requests for surveys, engineering reports and the new mine pool drawdown plan, it was clear to both the Division and Operator that a further extension would be in order.

13. Accordingly, in an email dated May 21, 2019 which accompanied the 4th Adequacy Review Letter, the Division sent an email stating:

Given that the Board-Ordered decision date was today, 5/21, I strongly recommend you submit an extension request as soon as possible. We would need to set your request for consideration by the Board, most likely the June 26th meeting.

14. The 4th Adequacy Review Letter also noted the need for an extension:

...[T]he application decision date of May 21, 2019 was set by the Board Order mailed on March 7, 2019. Therefore, if you are unable to address all remaining adequacy items by this date [THE SAME DATE AS THE LETTER ITSELF] an extension request must be submitted to our office. Such a request would need to be scheduled for consideration by the Mined Land Reclamation Board at an upcoming meeting.

15. On May 29, 2019 to CMC, the Division stated in an email to CMC:

[I]f you submit an extension request for AM-1 by close of business next Thursday, June 6, 2019, we could revise the Board agenda for this matter to consider your extension request rather than failure to comply with a Board Order.

16. Accordingly, on June 5th, 2019, believing its request to be unopposed by the Division, CMC submitted a request to the Mined Land Reclamation Board for an extension for the review time and decision date for its Application for an Amendment to the Gold Hill Mill Limited Impact Permit 110(2) Permit No. 1994-117.

17. On June 5th, 2019, CMC received a letter from the Division that, "Given the handful of adequacy items remaining, most of which require only a commitment, we believe the remaining items could be addressed quickly."

18. CMC was therefore shocked to receive the June 12, 2019 letter with no mention of extension and denying the permit amendment application altogether.

19. Because CMC was focusing on compliance with the requests in the 4th Adequacy Review letter and believed an extension was agreed upon, is not prepared to present witnesses and or exhibits in a timely manner, has necessary witnesses who are unavailable on such short notice, and has been sorely prejudiced.

20. CMC relied in good faith on the Division's intimations that the request for extensions both of the AM-1 review and decision dates and the enforcement hearing would be endorsed by the Division.

21. The Division states that Adequacy Review Letter No. 4 addresses a, "handful of adequacy items remaining, most of which require only a commitment" from CMC to obtain the Division's approval.

22. Given the length of time and the amount of funding used to get to the place where "a handful" of items remain; CMC is baffled by the Division's decision then to move aggressively to deny the permit amendment and revoke the Gold Hill Mill Permit.

23. Although many of the items addressed in the Adequacy Review Letter #4 may require only a commitment from CMC, there are several problems, including:

- a. Several of the items to which CMC was asked to "commit" cannot be answered without the completion of the recommended testing to be done by Deere & Ault Consultants.

b. the mine drawdown plan (requiring the pump testing for completion) is not one of the items that can be addressed by commitment unless the Division is willing to allow a conditional permit amendment, which has not, as of this date, been discussed.

23. Obviously, the granting of the permit amendment would moot the present enforcement hearing. CMC hopes that the granting of an extension will lead the Division to reconsider its denial of the Application to Amend the Permit. If not, CMC intends to appeal the June 12, 2019 decision. Thus, it is requested that the instant hearing be postponed and rescheduled contemporaneously with or after the hearing on the Application for an Amendment to the Gold Hill Mill Limited Impact 110(2) Permit No. M-1994-117.

24. In order to meet the concerns of the 4th Adequacy Review in the context of the Application to Amend, CMC requests the Board amend the Cease and Desist Order to grant an exception to allow the pump testing contemplated by the Goss Report.

25. Such testing is consistent with allowing an exception to the Cease and Desist Order for activity which is necessary to protect the environment and public safety.

26. Such testing will lend insight into the integrity of the bulkhead, which is the main concern of the Division in evaluating the Amendment to the Permit to include the Gold Hill Mill Waterline and should not be put off.

27. CMC has dedicated over a year of work and has employed outside consultants such as Deere & Ault Consultants, Inc., J.M. Beck & Associates, and Carl Swift, Registered Mineral Surveyor to aid it in complying with the requests of the Division. The company would be severely impacted by losing a permit for the only mill capable of processing ore from the mines in the Gold Hill Mining District.

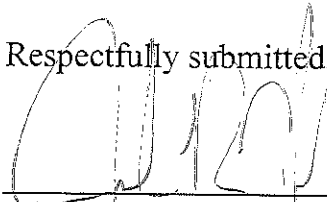
28. In the alternative, if no extension is granted, CMC requests the Application to Amend the Permit be granted, with the condition that CMC provide the Division with the pump testing results within 60 days.

29. The Board is reminded that the Colorado Legislature has adopted a policy that the "extraction of minerals and the reclamation of land affected by such extraction are both necessary and proper activities." It is the stated intent of the general assembly, "to foster and encourage the development of an economically sound and stable mining and minerals

industry and to encourage the orderly development of the state's natural resources..."
C.R.S. § 34-32-102.

Dated this 21st day of June, 2019.

Respectfully submitted,



John R. Henderson, #9013
Cynthia T. Kennedy, #11668
308 E. Simpson Street
Lafayette, CO 80026
720-971-7083

Certificate of Mailing

I hereby certify that on this 21st day of June, 2019 I emailed a copy of this document to the persons listed below and I did place a true and correct copy of the forgoing in the United States Mail, first class postage prepaid and addressed to the following:

Amy Eschberger

(amy.eschberger@state.co.us)

Michael Cunningham (michaela.cunningham@state.co.us)

Colorado Division of Reclamation, Mining and Safety

1313 Sherman Street, Room 215

Denver, CO 80203

Scott Schultz, Esq.

(scott.schultz@coag.gov)

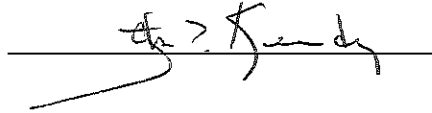
Assistant Attorney General

Natural Resources & Environment Section

Ralph L. Carr Colorado Judicial Center

1300 Broadway, 7th Floor

Denver, CO 80203



BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

Violation No. MV-2017-036

**COLORADO MILLING COMPANY, LLC'S WITNESS & EXHIBIT LIST
HEARINGS SCHEDULED JUNE 26-27, 2019**

**IN THE MATTER OF A POSSIBLE VIOLATION BY COLORADO MILLING
COMPANY, LLC, CEASE AND DESIST ORDER, CORRECTIVE ACTIONS,
AND CIVIL PENALTIES FOR FAILING TO PROTECT AREAS OUTSIDE OF
THE AFFECTED LAND FROM DAMAGES, File No.M-1994-117**

COMES NOW, Colorado Milling Company, LLC ("CMC" or "Operator"), and
endorses the following witnesses and exhibits:

Witnesses:

1. Mark A. Steen
Colorado Milling Company, LLC
P.O. Box 1523
Longmont, CO 80502
2. Mike Bynum
Colorado Milling Company, LLC
50 West 100 South St.
Moab, UT 80342
3. Christopher Goss, PhD, P.E. (Resume Attached)
Mining/Civil Engineer, Principal
Deere & Ault Consultants, Inc.
600 Airport Road, Building A, Suite 205
Longmont, CO 80503
(303) 651-1468
4. Carl Swift
Mountain Surveying LLC
Box 783
Nederland, CO 80466

5. James M. Beck, P.E.
6130 West Vassar Way
Denver, CO 80227

6. Amy Eschberger
DRMS

Exhibits:

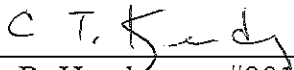
1. Hard Rock Extraction Staff Presentation Form, February 20-21, 2019 Board Meeting.
2. 4th Adequacy Review Letter.
3. Email from Amy Eschberger, DRMS dated May 21, 2019
4. Email from Amy Eschberger, DRMS dated May 29, 2019.
5. Email from Amy Eschberger, DRMS dated June 5, 2019.
6. CMC letter to Board dated June 5, 2019 re request for extension of time.
7. CMC letter to DRMS dated June 6, 2019.
8. Letter from Amy Eschberger, DRMS dated June 12, 2019.
9. Letter to Board from Christopher Goss, PhD. Mining/Civil Engineer re Times Mine Bulkhead at Gold Hill Mill Site dated June 14, 2019.
10. Resume of Christopher Goss, PhD. Mining/Civil Engineer.
11. 1st Adequacy Review Letter.
12. CMC Response to Adequacy Review Letter #1 with exhibits.
13. 2nd Adequacy Review Letter.
14. CMC Response to Adequacy Review Letter #2 with exhibits.
15. 3d Adequacy Review Letter.
16. CMC Response to Adequacy Review Letter #3
Colorado Milling Company, LLC
Gold Hill Mill/M-1994-117
MV-2107-036

17. Printout from Web site re filed documents.

18. CMC Response to Adequacy Review Letter #4 with exhibits.

Dated this 21st day of June, 2019.

Respectfully submitted,



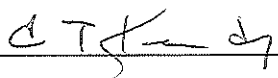
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(amy.eschberger@state.co.us)
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