BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

COTTER CORPORATION (N.S.L.)'S MOTION FOR CONTINUANCE OF THE HEARING ON COTTER'S NOTICES OF TEMPORARY CESSATION FOR THE JD-6, JD-7, JD-8, JD-9, SR-11, SR-13A, SM-18, C-LP-21, CM-25, AND MINERAL JOE MINES, AND FOR EXPEDITED RULING

FILE NOS. M-1977-310, M-1979-094-HR, M-1984-014, M-1977-306, M-1977-451, M-1977-311, M-1978-116, M-1977-305, M-1977-307, M-1977-284

Cotter Corporation (N.S.L.) ("Cotter") respectfully requests that this Board continue the hearing on Cotter's notices seeking a second period of temporary cessation for the above-listed mines ("Mines") from November 13, 2019 to February 2020. As discussed below, Cotter seeks this relief because: (a) its President and principal witness, Ken Mushinski, has conflicts with this Board's meeting dates in November and December 2019; (b) the undersigned counsel has conflicts with the Board's meeting dates in December 2019 and January 2020; (c) the U.S. Department of Energy ("DOE") has recently initiated discussion with Cotter for the negotiation of new leases covering the Mines, and those discussions are directly relevant to the issues to be raised in the proposed hearing; and (d) the United States Nuclear Fuel Working Group, established this year by President Trump, has yet to issue its report setting forth its findings and recommendations to further enable nuclear fuel production. That report is directly relevant to future uranium production from the Mines, and should be considered in the hearing on Cotter's notices of temporary cessation.

Cotter also respectfully requests that this Board hear this motion at its October 23-24, 2019 monthly meeting and issue an expedited ruling on the motion. Without an expedited hearing and ruling on this motion, Cotter will suffer extreme prejudice because the Board would likely not decide this motion until the November 13, 2019 hearing date. Such a result would

force Cotter, the Division of Reclamation, Mining, and Safety ("Division"), this Board, and the objecting parties to invest substantial resources in preparing for a hearing that could be continued at the last minute.

The grounds and good cause for this motion are more fully discussed below.

1. On October 18, 2011, the U.S. District Court for the District of Colorado ruled that the DOE's proposed expansion of its Uranium Lease Management Program ("ULMP") violated certain Federal environmental laws, and enjoined the DOE from "approving any activities on lands governed by that program including exploration, drilling, mining and reclamation activities." *Colorado Envtl. Coalition v. Office of Legacy Management*, 819 F. Supp. 2d 1193, 1224-225 (D. Colo. 2011). On February 27, 2012, the injunction was amended as specified in the Court's order of that date, but still enjoined "exploration, drilling [and] mining" on ULMP lands. The Mines are either located on DOE property and were subject to the Federal injunction, or, in the case of the Mineral Joe site, can only be accessed through Federal land subject to the Federal injunction.

2. In 2017, Cotter timely filed notices with the Division requesting a second five-year period of temporary cessation for the JD-6, JD-7, JD-9, SR-11, SR-13A, SM-18, C-LP-21, CM-25, and Mineral Joe Mines.

3. On April 9, 2018, this Board entered an order continuing consideration of Cotter's notices until such time as the Federal injunction is lifted or amended to allow Cotter to engage in mining activity at the mines covered by Cotter's notices. Two of the objectors in the Cotter proceeding were plaintiffs in *Colorado Envtl. Coalition,* and proponents of the Federal injunction.

4. On March 18, 2019, the United States District Court for the District of Colorado entered an order dissolving the Federal injunction.

5. On March 31, 2019, Cotter timely filed its notice requesting a second five-year period of temporary cessation for the JD-8 Mine.

6. By Order, dated July 10, 2019, this Board consolidated the hearing on Cotter's temporary cessation notice for the JD-8 Mine with the hearing on the pending notices of temporary cessation for the other Mines, and continued the consolidated hearing until the Colorado Court of Appeals issued its final decision in *Information Network for Responsible Mining (INFORM), et al. v. Colorado Mined Land Reclamation Board*, 2018CA1148 ("INFORM case").

7. The Colorado Court of Appeals issued its decision in the INFORM case on July 25, 2019, and issued its mandate on September 23, 2019.

8. In an email dated September 24, 2019, the Division suggested dates of November 13, 2019, December 11, 2019, or January 22, 2020 for the hearing on Cotter's notices of temporary cessation. Cotter responded that those dates did not work, and proposed that the hearing go forward in February 2020 (one month after the last date proposed by the Division).

9. On October 10, 2019, the Division wrote a letter to Cotter setting the hearing on Cotter's notices of temporary cessation for November 13, 2019, but advising that any party could seek a further continuance or extension of the hearing based on good cause.

10. Good cause exists to continue the hearing on Cotter's notices of temporary cessation from November 13, 2019 to February 2020. Cotter's President, Ken Mushinski, will be Cotter's principal witness at the hearing and is necessary to the fair presentation of its case, but is unavailable for hearing dates in November and December, 2019. Mr. Mushinski cannot attend in

November due to already committed travel — he will be in western Asia on business in November 2019 and is again committed to such matters the week of December 9, 2019. The Board's monthly meeting in December is set for December 11-12, 2019. Moreover, due to commitments in a separate case pending in Federal court, the undersigned counsel has conflicts with the proposed hearing dates in December 2019 and January 2020.

11. The attendance of a litigant is necessary for a fair presentation of its case. *Gonzales v. Harris*, 542 P.2d 842, 843 (Colo. 1975). Moreover, "A litigant has the right to be present to assist his counsel in the trial, and his necessary absence is a good reason for a continuance." *Id.,* at 843-44. Here, Cotter's substantial rights will be severely prejudiced if the hearing is not continued to a date when Mr. Mushinski can attend, testify, and assist counsel. For this reason alone, the hearing on Cotter's notices of temporary cessation must be reset.

12. Good cause also exists to continue the hearing from November 13, 2019 to February 2020 because the DOE recently initiated discussions with Cotter for the negotiation of new leases covering the JD-6, JD-7, JD-8, JD-9, SR-11, SR-13A, SM-18, C-LP-21, and CM-25 Mines. Those negotiations are important because the newly negotiated lease terms are directly relevant to the issues to be raised in the proposed hearing, such as access to the Mines. There is a 180-day window to negotiate the new leases. While Cotter does not know how long the negotiating process will take, it believes the negotiations can be completed by February 2020. It is not Cotter's fault that, this week, the DOE first started the explanatory process for the lease negotiations.

13. Further, good cause exists to continue the hearing from November 13, 2019 to February 2020 to enable review and consideration of the United States Nuclear Fuel Working Group's ("Working Group") anticipated report on reviving and expanding domestic nuclear fuel

production. As background, on July 12, 2019, President Trump determined that the United States uranium industry faces significant challenges in producing uranium domestically, and that this is an issue of national security. *See* Presidential Memorandum on the Effect of Uranium Imports on the National Security and Establishment of the United States Nuclear Fuel Working Group (July 12, 2019) (attached hereto as Exh. 1). To address this situation, the President directed the Assistant to the President for National Security Affairs and Assistant to the President for Economic Policy to develop recommendations for reviving and expanding domestic nuclear fuel production. *Id.*, at 3. The Working Group was tasked with examining the current state of domestic nuclear fuel production to reinvigorate the entire nuclear fuel supply chain, consistent with United States national security and nonproliferation goals. *Id.*, at 4. Within 90 days of July 12, 2019, the Working Group was to submit a report to the President setting forth its findings and making recommendations to further enable domestic nuclear fuel production if needed. *Id.*, at 5. The report has yet to be issued. However, based on the Working Group's assignment, its report should be directly relevant to the importance of resuming uranium production from the Mines. Granting a continuance of the temporary cessation hearing to February 2020 should enable consideration of Working Group's final report and the President's directives based on the report.

14. No prejudice would result if the proposed hearing is continued until February 2020. To the undersigned's knowledge, no party is inconvenienced if the consolidated hearing is set for February 2020. Nor will the environment be adversely impacted if such a continuance is granted. Cotter has continued to maintain the Mines in accordance with this Board's rules and the thorough, approved Environmental Protection Plans that Cotter previously filed with the Division. Cotter is seeking to continue the hearing for a date one month after the last date proposed by the Division in its September 24, 2019 email.

15. This Board has broad authority to continue the hearing on Cotter's notices of temporary cessation, as specified in Hard Rock/Metal Mining Rule 1.13.6(2): "The Board . . . may take whatever action(s) it deems necessary and are authorized by law, including but not necessarily limited to . . . (d) 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 Office staff to conduct a site inspection or otherwise review the matter as necessary . . . ." Here, this Board should exercise its authority and set the proposed hearing for a date that works for Cotter and its counsel. Basic fairness and due process require this result. *See Gonzales*, 542 P.2d at 843-44 ("trial court's legitimate concern for the prevention of delay in the trial of cases should not prejudice the substantial rights of parties by forcing them to go to trial without being able to fairly present their case").

16. Cotter also respectfully requests that this Board hear this motion at its October 23-24, 2019 monthly meeting and issue an expedited ruling on the motion. Without an expedited hearing and ruling on this motion, Cotter will suffer extreme prejudice because the Board would likely not decide this motion until the November 13, 2019 hearing date. Such a result would force Cotter, the Division, the objecting parties, and this Board to invest substantial resources in preparing for a hearing that could be continued at the last minute.

For the above reasons, this Board should continue the hearing on Cotter's notices of temporary cessation from November 2019 to February 2020, hear this motion at its October 23-24, 2019 monthly meeting, and issue an expedited ruling on this motion.

Respectfully submitted this 11th day of October, 2019.

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CERTIFICATE OF SERVICE

I, Linda Schuch, certify that I sent via electronic mail on the signature date shown below a true and complete copy of the foregoing document **COTTER CORPORATION (N.S.L.)'S MOTION FOR CONTINUANCE OF THE HEARING ON COTTER'S NOTICES OF TEMPORARY CESSATION FOR THE JD-6, JD-7, JD-8, JD-9, SR-11, SR-13A, SM-18, C-LP-21, CM-25, AND MINERAL JOE MINES, AND FOR EXPEDITED RULING** to the following:

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Linda Schach. (signature) 10/11/2019 (date)

EXHIBIT 1

PRESIDENTIAL MEMORANDA

Memorandum on the Effect of Uranium Imports on the National Security and Establishment of the United States Nuclear Fuel Working Group

NATIONAL SECURITY & DEFENSE

Issued on: July 12, 2019

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MEMORANDUM FOR THE SECRETARY OF STATE
THE SECRETARY OF THE TREASURY
THE SECRETARY OF DEFENSE
THE SECRETARY OF THE INTERIOR
THE SECRETARY OF COMMERCE
THE SECRETARY OF ENERGY
THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET
THE ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS
THE ASSISTANT TO THE PRESIDENT FOR ECONOMIC POLICY
THE DIRECTOR OF THE OFFICE OF SCIENCE AND TECHNOLOGY POLICY
THE CHAIRMAN OF THE COUNCIL OF ECONOMIC ADVISERS
THE CHAIRMAN OF THE NUCLEAR REGULATORY COMMISSION

THE CHAIRMAN OF THE FEDERAL ENERGY REGULATORY COMMISSION

SUBJECT: The Effect of Uranium Imports on the National Security and Establishment of the United States Nuclear Fuel Working Group

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862) (the "Act"), it is hereby ordered as follows:

Section 1. The Secretary of Commerce's Investigation into the Effect of Uranium Imports on the National Security. (a) On April 14, 2019, the Secretary of Commerce (Secretary) transmitted to me a report on his investigation into the effect of imports of uranium (uranium ore, uranium concentrate, uranium hexafluoride, enriched uranium, and enriched uranium in fuel assemblies) on the national security of the United States under section 232 of the Act.

(b) The Secretary found and advised me of his opinion that uranium is being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States as defined under section 232 of the Act. Currently, the United States imports approximately 93 percent of its commercial uranium, compared to 85.8 percent in 2009. The Secretary found that this figure is because of increased production by foreign state-owned enterprises, which have distorted global prices and made it more difficult for domestic mines to compete.

(c) At this time, I do not concur with the Secretary's finding that uranium imports threaten to impair the national security of the United States as defined under section 232 of the Act. Although I agree that the Secretary's findings raise significant concerns regarding the impact of uranium imports on the national security with respect to domestic mining, I find that a fuller analysis of national security considerations with respect to the entire nuclear fuel supply chain is necessary at this time.

Sec. 2. Establishment of the United States Nuclear Fuel Working Group. (a) I agree with the Secretary that the United States uranium industry faces significant challenges in producing uranium domestically and that this is an issue of national security. The United States requires domestically produced uranium to satisfy Department of Defense (DOD) requirements for maintaining effective military capabilities — including nuclear fuel for the United States Navy's fleet of nuclear-powered aircraft carriers and nuclear-powered submarines, source material for nuclear weapons, and other functions. Domestic mining, milling, and conversion of uranium, however, while significant, are only a part of the nuclear supply chain necessary for national security, including DOD needs.

(b) On June 29, 2017, I announced an initiative to revive and expand the nuclear energy sector and directed a complete review of United States nuclear energy policy to help find new ways to revitalize this crucial energy resource. Nuclear fuel production is critical to a vibrant nuclear energy sector. Over many prior administrations, the Federal Government has neglected to consider the impacts on key components of our nuclear fuel production infrastructure, while simultaneously increasing regulatory barriers for private-sector innovation in this technology.

(c) To address the concerns identified by the Secretary regarding domestic uranium production and to ensure a comprehensive review of the entire domestic nuclear supply chain:

(i) The Assistant to the President for National Security Affairs and the Assistant to the President for Economic Policy shall establish a United States Nuclear Fuel Working Group (Working Group) to develop recommendations for reviving and expanding domestic nuclear fuel production.

(ii) The Working Group shall include the following members or their designees:

(A) the Assistant to the President for National Security Affairs, who shall serve as one of the Co-Chairs;

(B) the Assistant to the President for Economic Policy, who shall serve as the other Co-Chair;

(C) the Secretary of State;

(D) the Secretary of the Treasury;

(E) the Secretary of Defense;

(F) the Secretary of the Interior;

(G) the Secretary of Commerce;

(H) the Secretary of Energy;

(I) a designee of the Nuclear Regulatory Commission;

(J) a designee of the Federal Energy Regulatory Commission;

(K) the Director of the Office of Management and Budget;

(L) the Director of the Office of Science and Technology Policy;

(M) the Chairman of the Council of Economic Advisers; and

(N) such other officials of the Federal Government as the Assistant to the President for National Security Affairs or the Assistant to the President for Economic Policy may invite to participate.

(iii) The Working Group shall examine the current state of domestic nuclear fuel production to reinvigorate the entire nuclear fuel supply chain, consistent with United States national security and nonproliferation goals.

(iv) Within 90 days of the date of this memorandum, the Working Group, through the Assistant to the President for National Security Affairs and the Assistant to the President for Economic Policy, shall submit a report to the President setting forth the Working Group's findings and making recommendations to further enable domestic nuclear fuel production if needed.

Sec. 3. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof;

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals; or

(iii) existing rights or obligations under international agreements.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP