

WESTERN MINING ACTION PROJECT

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May 19, 2020

Mr. Russ Means
Minerals Program Director
Colorado Division of Reclamation, Mining & Safety
1313 Sherman Street
Room 215
Denver, Colorado 80203
Via email to: Russ.Means@state.co.us, Ginny.Brannon@state.co.us, Jeff.Fugate@state.co.us,
stephanie.mitchell@state.co.us, Dustin.Czapla@state.co.us, camille.mojar@state.co.us

Re: Objection to Extension of Temporary Cessation Status, White Banks Mine,
Permit No. M-1999-042

Dear Mr. Means,

We have reviewed the February 20, 2020 Notice of Hearing sent by the Division of Reclamation, Mining & Safety (DRMS) to Mr. Robert Congdon, the operator of the White Banks Mine (Permit No. M-1999-042), located in the Crystal River Valley south of Carbondale. The Notice of Hearing indicates that DRMS is requesting that the White Banks Mine Permit be placed in a second and final term of temporary cessation (TC), retroactive to November 21, 2018 and ending on November 21, 2023. As explained herein, we object to the grant of a second term of TC based on the lack of evidence of any production occurring at the mine in more than ten years. Rather, the available evidence demonstrates that no production has occurred in well over a decade. As such, DRMS and the Mined Land Reclamation Board (MLRB) should place the mine in final reclamation due to the extended period of nonproduction, in conformance with the Colorado Land Reclamation Act for the Extraction of Construction Materials (Construction Materials Reclamation Act), C.R.S. §§ 34-32.5-101, et seq.

I. Wilderness Workshop and INFORM are Adversely Affected or Aggrieved.

As a preliminary matter, Wilderness Workshop (WW) and INFORM are adversely affected or aggrieved parties in this case. WW's and INFORM's members use and enjoy the lands and waters at and adjacent to the White Banks Mine site and impacted lands and waters for recreational, aesthetic, scientific and conservation purposes. The types of interests the legislature meant to protect through the Construction Materials Reclamation Act "include, but are not limited to,

business, economic, aesthetic, governmental, recreational, or conservational interests.” C.R.S. § 34-32.5-103(1.5).

In this case, the Mine overlaps with important ecological, aesthetic, recreational, and conservational values that WW, INFORM, and their members have worked long to protect. Mining operations threaten those values. WW has long participated in decisions related to the operation of this Mine, including commenting and appealing the U.S. Forest Service’s permitting decisions. WW and INFORM members also live nearby the mine and are directly impacted by activities at the mine. For these reasons and more, WW, INFORM, and their members are adversely affected or aggrieved by the White Banks Mine and related operations there. These interests would best be served by an order from DRMS and the MLRB terminating mining at White Banks and demanding compliance with final reclamation requirements, as required by law.

II. Temporary Cessation is Unjustified Due to A Prolonged Period of Nonproduction.

Temporary cessation is defined as a period of nonproduction in the life of a mine. Info. Network for Responsible Mining v. Colo. Mined Land Reclamation Bd., 2019 COA 114, ¶ 13, 451 P.3d 1245, 1248 (July 2019) (citing Mined Land Reclamation Board Hardrock Rules 1.1(53) & 1.13.2, 2 Code Colo. Regs. 407-1); see also C.R.S. § 34-32-103(6)(a). The Colorado Court of Appeals recently confirmed that temporary cessation is a factual status that begins when production ceases on the site, regardless of any administrative status. Id. at ¶¶ 11, 13. The same court ordered termination of mining operations and compliance with reclamation standards at a mine where nonproduction (i.e., temporary cessation) had continued for more than ten years. Id. at ¶ 11; see also id., at ¶ 7 (quoting the MLRA (§ 34-32-103(6)(a)(III)): “[i]n 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.”). The same statutory and regulatory requirements referenced by the Court of Appeals also apply to permits for construction materials. See § 34-32.5-103(11)(c); Construction Materials Rule 1.13.9.

WW and INFORM assert that the Construction Materials Reclamation Act provides no basis for any further periods of TC for the White Banks Mine and that the permit must be terminated, and final reclamation commenced. No production has occurred at the White Banks Mine in more than a decade. In fact, recent correspondence with the U.S. Forest Service confirms that the last production from White Banks occurred in 2003, approximately 17 years ago. See Exhibit 1 (U.S. Forest Service email correspondence dated February 28, 2020).

The DRMS electronic files also support a conclusion that no production has occurred for over ten years. The February 20, 2020 letter from DRMS noticing a hearing in this matter references annual reports submitted by the operator identifying August 2014 as the last reported date of production and seeks to base the TC period from this date. However, the file demonstrates that the activities in 2014 did not include production. Specifically, the operator’s annual report submitted in January 2015 states that the 2014 activities consisted entirely of the “removal of equipment” from the site. Indeed, the operator specifically crossed out the references to both “excavation” and “processing” from the report form.

Further, in a letter from the operator to DRMS dated August 16, 2013 protesting an increase in the surety amount, the operator states that: “The existing bond of approx. \$15,000 was recalculated less than three years ago and the conditions on site have not changed. There have been no additional

structures built and no surface activity has occurred other than one piece of equipment on a mobile trailer.” Thus, these statements push back any potential date of production at least to 2011. However, documents from that year demonstrate a lack of production going even further back. Specifically, a memo from DRMS to the Mined Land Reclamation Board dated June 30, 2011 includes an inspection report dated September 16, 2010. In that report, the DRMS notes that “Currently there are no underground activities taking place. What activities are taking place on the surface is site maintenance and clean -up.” A review of the remainder of the DRMS files also fails to provide any evidence of any recent production. As a result, the record demonstrates that no production has occurred for well beyond the ten-year limit.

III. Conclusion

Due to the prolonged period of nonproduction at the White Banks Mine, it would be contrary to the Construction Materials Reclamation Act and the Board’s Construction Materials Rules for DRMS or the Board to grant any further period of TC. Instead the DRMS and Board should terminate mining and require the operator to commence final reclamation.

Sincerely,

/s/Jeffrey C. Parsons

Jeffrey C. Parsons
Western Mining Action Project
Attorney for Wilderness Workshop and INFORM

Subject: FW: White Banks
Date: Friday, March 13, 2020 at 12:17:33 PM Mountain Daylight Time
From: Warner, Kevin -FS <kevin.warner@usda.gov>
To: Peter Hart <peter@wildernessworkshop.org>
Attachments: image005.png, image006.png, image007.png, image008.png, image009.png, image010.png, image011.png, image012.png

Peter- sorry, this got lost in my inbox. Please see Olivia's response below.

Cheers,



Kevin Warner
District Ranger
Forest Service
White River National Forest, Aspen-Sopris Ranger District

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Caring for the land and serving people

From: Garcia, Olivia -FS <olivia.garcia@usda.gov>
Sent: Friday, February 28, 2020 8:02 AM
To: Warner, Kevin -FS <kevin.warner@usda.gov>
Cc: Fitzwilliams, Scott -FS <scott.fitzwilliams@usda.gov>
Subject: RE: White Banks

Good Morning Kevin,

Mr. Hart is correct. There has been no development (2011-2015) and no production activities at the White Banks mine from the current Operator since 2003.



Olivia Garcia
Environmental Engineer (AML Coordinator)
Forest Service
White River NF, Supervisor's Office

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From: Warner, Kevin -FS
Sent: Thursday, February 27, 2020 5:50 PM
To: Garcia, Olivia -FS <olivia.garcia@usda.gov>
Cc: Fitzwilliams, Scott -FS <scott.fitzwilliams@usda.gov>
Subject: FW: White Banks

Olivia- can you confirm/deny the question(s) below?

Thanks,



Kevin Warner
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Caring for the land and serving people

From: Peter Hart <peter@wildernessworkshop.org>
Sent: Tuesday, February 25, 2020 12:06 PM
To: Warner, Kevin -FS <kevin.warner@usda.gov>
Cc: Fitzwilliams, Scott -FS <scott.fitzwilliams@usda.gov>
Subject: Re: White Banks

Kevin – I’m just trying to get back up to speed on the history/facts here. Looking back at the 2011 EA, it looks like there was no production at the mine between 2003 and 2011 (“Since 2003, no production has taken place at the mine. In 2007, a Quick Claim deed between Robert Congdon and the Mystic Eagle Quarry LLC transferred ownership of the White Banks Claims CMC#255401 through CMC#2254010. The new owners hired a contractor to begin cleanup efforts by removing a dilapidated camper trailer and solid waste left behind by the previous owner. The new owners also retained the services of a contractor to begin the survey work for the bypass road.” See https://www.fs.usda.gov/nfs/11558/www/nepa/75562_FSPLT2_056573.pdf), at 1). I don’t recall any development at the mine between 2011 and 2015 either, is that correct? So, really, there hasn’t been any production from this mine since at least 2003. Or am I mistaken?

Thanks,
Peter Hart

From: "Warner, Kevin -FS" <kevin.warner@usda.gov>
Date: Monday, February 24, 2020 at 5:44 PM
To: Peter Hart <peter@wildernessworkshop.org>
Cc: "Fitzwilliams, Scott -FS" <scott.fitzwilliams@usda.gov>
Subject: RE: White Banks

Peter,

You are correct. No development work took place from 2015 – 2019. We have a change in ownership, Mystic Eagle Quarry LLC to Snowmass Mining Company, and the FS is in the transition phase between operators. No mining activity is planned for this summer.

Hope that helps.

Cheers,



Kevin Warner
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White River National Forest, Aspen-Sopris Ranger District

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Caring for the land and serving people

From: Peter Hart <peter@wildernessworkshop.org>
Sent: Monday, February 24, 2020 11:34 AM
To: Fitzwilliams, Scott -FS <scott.fitzwilliams@usda.gov>; Warner, Kevin -FS <kevin.warner@usda.gov>
Subject: White Banks

Kevin / Scott – Can you tell me what's been going on at the White Banks Mine? I know the USFS approved an operating plan for a development phase in 2015. I think that period was set to end on 2019. I'm curious what

happened during that phase, and what's going on now.

Thanks,

--

Peter Hart

Staff Attorney

Wilderness Workshop

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