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AUG 07 2020

**DIVISION OF RECLAMATION
MINING AND SAFETY**

August 4, 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,

Pitkin County has 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. Pitkin County objects to the grant of a second term of TC based on the cessation of mining activity and any production or extraction of material in more than ten years. As such, DRMS and the Mined Land Reclamation Board (MLRB) should place the mine in final reclamation due to the 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. Pitkin County's Concerns Related to the White Banks Mine

Pitkin County regulates the mining activity of White Banks Mine through our Land Use Code and those sections pertaining to extractive operations and mining. We have asserted various requirements upon the White Banks Mine in order to mitigate the off-site impacts of the mining operations. Principal among these impacts are the truck traffic utilizing State Highway 133 with an uncontrolled access onto the highway, the generation of noise and its impact on near-by residential properties, the degradation of water quality in Avalanche Creek and the Crystal River

and the impacts of all aspects of the mining operation on the resident herd of big horn sheep that frequent the slopes above the mine and utilize the area for winter range.

The mitigation requirements of the County's permit are dated and will become more so if the mine is allowed to remain dormant for a longer period of time. These enumerated impacts and others must have relevant mitigation requirements, timely ascertained in relation to the operation of the mine. Pitkin County's permit is tied to the State permits for this mining activity.

II. Temporary Cessation is Not Permitted Under Colorado Law 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.

Pitkin County asserts 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

Pitkin County requests that the Construction Materials Reclamation Act and the Board’s Construction Materials Rules for DRMS and the Statutory provisions cited be adhered to and the Board not grant any further period of TC. Instead the DRMS and Board should terminate mining and require the operator to commence final reclamation.

PITKIN COUNTY ATTORNEY’S OFFICE

Sincerely,

A handwritten signature in blue ink, appearing to be "J. Smith", is written over a faint, light blue circular stamp or watermark.

Pitkin County Attorney